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FEDERAL LICENSING PROCEDURES FOR ARMS EXPORTS

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

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FRIDAY, FEBRUARY 20, 1987

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FEDERAL LICENSING PROCEDURES FOR ARMS EXPORTS

FRIDAY, FEBRUARY 20, 1987

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 342 of the Dirksen Senate Office Building, Hon. John Glenn, chairman, presiding.

Present: Senators Glenn, Pryor, Sasser, Bingaman, Mitchell, and Stevens.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The Committee will be in order.

On July 8, 1981, President Reagan issued a policy directive that altered the tone if not the substance of previous policy on the export of conventional arms.

The administration previous to this—the Carter administration—emphasized extreme responsibility with regard to arms sales. The new administration has shifted the focus more toward promotion of these sales as standard tools for the implementation of U.S. foreign policy.

I think we may have swung too far away from the basic principles that have long guided our exports of conventional arms. I have no quarrel, whatsoever, with the wisdom of providing military assistance to our allies. It is quite justified in the American tradition of doing what we can, within the law, to promote our bipartisan foreign policy objectives.

And given the beating that American companies are taking in their search for world markets, I am well aware of the need to maintain American competitiveness in this tight international market.

The law requires, however, and the public expects that our exports of conventional arms will be regulated responsibly. By that I mean: first, that the agencies will be appropriately staffed to do the job; second, that they will issue regulations that fit the task; and third, that these regulations will be enforced both efficiently and effectively.

Although these hearings will be exploring all these dimensions, let there be no mistake that responsibility is the key issue. A quick glance over last year's headlines does not inspire much confidence that these exports are indeed being regulated responsibly.

Terrorists are found with U.S. weapons. Brokers, transshippers, other middle men who traffic in U.S. arms are reported to be depositing their ample profits into off-shore bank accounts—the Bahamas, the Cayman Islands, we had testimony on that a couple of days ago here—and other locations where secrecy is guaranteed.

Just this week we learned at our Committee's hearings on Inspector General operations that the inventory procedures of the U.S. Air Force are so inadequate that its worldwide logistics command cannot account, either plus or minus, on almost one-third of its spare parts and ammunition.

I also serve on the Armed Services Committee, where we are debating dollars to be spent for readiness accounts for arms and ammunition—things that would enable us to go out and use the weapon systems we have. We do not know within a third; and they tell us, also, that may be the most optimistic of the reports on the Services. It just happens to be the first one that we have some information on.

GAO recently announced that it was unable to account for nearly $17 million of the $27 million in humanitarian assistance that was appropriated two years ago for the Contra resistance force in Nicaragua. They further said that of that $9 million they could account for, one of the contracts under that was $80,000 for hand grenades. Eighty thousand dollars for hand grenades—humanitarian assistance.

A few days ago in Washington, a television station, channel 9, announced that millions of rounds of ammunition that the Pentagon had purchased for the military in El Salvador apparently have disappeared and may have been illegally diverted to the Nicaraguan contras. No one seems to know what even happened to this ammunition.

These are all just examples of gross mismanagement of our arms export regulatory process. They must be eliminated. The time has come for that pendulum to swing back to the axis of responsibility I mentioned earlier.

I want to take this opportunity to congratulate Senator Pryor. Senator Pryor has taken the initiative in looking into this—under the oversight of this Committee—but he has been interested enough in looking into this—and I want his people back home to know of his interest in this monstrous problem, and that he has had his own personal office staff working on this for some months.

He has done an excellent job. We have talked about this privately, and I want to publicly, here, congratulate him on the very, very fine job that he has been doing in this area.

His personal interest in this is the reason why we are having this hearing at this time and this particular date. I was afraid yesterday when he was under the weather with the flue or whatever, that he might not be able to make the Hearing this morning—because I had told him that because, of his initiative in this, I want him to take the lead on this issue and chair it.

He has got a personal interest, he has done a lot of work on it, and I can not say enough about his initiative in this area on something that we as a Committee want to get into, and that I am glad to have a part in getting into. We look forward to his leadership and guidance.

I have some other commitments this morning. This was the morning that we could get some of the witnesses here, and so while I am glad to be here and kick this off this morning, I want to turn the gavel over to David this morning and he will be chairing the hearings on this.

David, you have done a great job. I know you are going to continue to do so. Thank you.

[Senator Glenn's prepared statement follows:]

PREPARED STATEMENT OF SENATOR GLENN

Before I begin my brief remarks today, I want to congratulate Senator Pryor and his staff for their fine work in putting together this hearing on Federal licensing procedures for arms exports. The committee has a long and distinguished history in this area, and I am delighted to see that this tradition is being so vigorously maintained.

On July 8, 1981, President Reagan issued a policy directive that altered the tone, if not the substance, of previous policy on the export of conventional arms. In contrast with the Carter administration's emphasis on—let me say—responsibility, the new administration shifted the focus more toward promotion of these sales as standard tools for the implementation of U.S. foreign policy.

From what I have been hearing lately, it appears that the pendulum has swung too far away from the basic principles that have long guided our exports of conventional arms. I have no quarrel with the wisdom of providing military assistance to our allies, or of doing what we can to promote, within the law, our bipartisan foreign policy objectives. And given the beating that American companies are taking in their search for world markets, I am well aware of the need to maintain American competitiveness in this tight international market.

The law requires, however, and the public expects, that our exports of conventional arms will be regulated responsibly—and by that I mean first that the agencies will be appropriately staffed to do the job, second that they will issue regulations that fit the task, and third that these regulations will be enforced both efficiently and effectively. Although these hearings will be exploring all of these dimensions, let there be no mistake that responsibility is the key issue.

A quick glance over last year's headlines does not inspire much confidence that these exports are indeed being regulated responsibly. Terrorists are found with the U.S. weapons. Brokers, transshippers, and other middlemen who traffic in U.S. arms are reported to be despositing their ample profits into offshore bank accounts in the Bahamas, Cayman Islands, and other locations where secrecy is guaranteed.

Just this week, we learned at our committee's hearing on inspector general operations that the inventory procedures of the U.S. Air Force are so inadequate that its worldwide logistics command cannot account for almost a third of its spare parts and ammunition. The GAO recently announced that in was unable to account for nearly $17 million of the $27 million in "humanitarian assistance" that was appropriated last year for the Contra resistance force in Nicaragua.

A few days ago, a Washington, DC television station—WUSA (Channel 9)—announced that millions of rounds of ammunition that the Pentagon had purchased for the military in El Salvador have apparently disappeared and may have been illegally diverted to the Nicaraguan Contras. No one seems to know what happened to this ammunition.

These, and all, examples of gross mismanagement of our arms exports regulatory process must be eliminated. The time has come for the pendulum to return to the axis of responsibility.

Senator Pryor, I want to again commend you on your fine work and I look forward to reviewing carefully the results of this hearing to see what we can do to restore the public's confidence in our institutions and laws for regulating commerce in arms.

Senator PRYOR. Mr. Chairman, do not leave yet.

First, I would like to thank the Chairman for his very kind remarks about my involvement on this issue.

But most importantly, I would like to state, just as a personal feeling this morning, that very few of us remember what we were doing 25 years ago today——

Chairman GLENN. I do.

Senator PRYOR [continuing]. But one of us here does, and of course that is our friend, the distinguished Chairman of this Committee.

Twenty-five years ago today, Colonel John Glenn became a national hero, and in my mind he is still a national hero, and he is still my hero, and he is all America's hero. So John, on behalf of your colleagues on this Committee, on behalf of the staff that operate this Committee and all our friends, we want to say, you are always our hero.

Senator STEVENS. Mr. Chairman, I remember what I was doing 25 years ago. It was not as productive as what you did. I had just kicked off my first campaign for the Senate. But I do recall that day, recall it well. You have just absolutely instilled in the hearts of all Americans the total desire to be involved and be part of the space age. I remember it so well.

As a matter of fact, John, I am on my way to Point Barrow, AK. So, we are going to both leave this to David, but I wanted to make certain that I stopped by and participated in this little brief remembrance of your great contribution to what you have done in space—and in the Senate, since you have been here, as far as the space program is concerned. I join in this.

Chairman GLENN. Thank you, Ted and David, very much. I appreciate those kind words. I did not know we were going to have that this morning.

Senator STEVENS. Tell us a little bit. How did you feel?

Chairman GLENN. Well, you are apprehensive. You are dealing with powers and speeds that you had not dealt with before. We were going to go about 5 miles each second up in space. You do not have anything close to you so you do not feel that speed quite that much. But you are concerned about reentry, and some things like that where we had an indication of a loose heat shield, and some things like that that were not on the space craft but on the ground.

What I have been doing on a couple of TV shows on this morning—I do not look at this as the end of things at all. I have been inviting people to be sure they stay tuned in because we are going to celebrate a golden anniversary as well as a silver anniversary some time.

We were joking coming back over in the car a little while ago about what that will be like. If I ever get around to celebrating a gold anniversary of this thing, they will say what was it like on the space flight, and I will probably say, what space flight?

Thank you all very much.

I appreciate it.

Thank you. Thank you.

Thank you, Ted and David. David, I know you are going to do a good job. Thank you all.

Senator STEVENS. Mr. Chairman, I ask that the statement of Senator Roth be printed in the record.

Senator PRYOR. Without objection.

Senator STEVENS. It is an opening statement.

Senator PRYOR. Thank you, Ted. Have a good trip.

[Senator Roth's statement follows:]

OPENING STATEMENT OF SENATOR ROTH

I would like to thank the chairman of the Governmental Affairs Committee for allowing these hearings on Federal licensing procedures for arms exports to be held.

I am particularly pleased that the three agencies involved with overseeing the licensing of arms exports are here to testify today. It is critical that these agencies coordinate their efforts if we are going to properly control the licensing procedures and flow of U.S. arms exports.

The complex nature of the current international situation guarantees that almost any foreign arms sale will prove controversial. Currently, we are faced with a deteriorating situation in the Persian Gulf, a deterioration profoundly inimical to U.S. interest. A superficial examination of the situation would probably lead us to recommend the sale of U.S. weaponry to the friendlier Arab Governments of the region. On the other hand, such sales might well be judged to be hostile to the security of the State of Israel. In short, any U.S. arms sales to the Middle East are, of necessity, extremely complex matters, worthy of deep, and cooperative study by a number of departments in the executive branch of Government.

The prevailing conflicts in many parts of the developing world insure a heavy demand for U.S. armaments. For a variety of reasons, the U.S. Government, on occasion, forbids the exportation of U.S. armaments to some of these zones of conflict—Iran and South Africa stand out as obvious examples. One offshoot of these Federal prohibitions appears to have been a flourishing of efforts by private individuals to smuggle arms for profit—to Iran, in particular. If the United States is going to properly control the export of U.S armaments, it is critical that the State Department, Defense Department, and U.S. Customs Service coordinate their efforts. It will be interesting to learn whether the Customs Service feels that it has sufficient resources to combat this problem and whether the Service feels that it obtains the necessary cooperation from other branches of Government.

Finally, I believe it is important to point out that, if the committee's hearings unearth serious problems in Federal arms licensing procedures, the committee itself must ponder carefully before suggesting solutions to those problems. Certainly, I do not believe that our licensing procedures could be facilitated by injecting Congress more deeply into the licensing process. The Congress already has its hands full. Typically, the floor schedule is crowded and any procedure which required repeated congressional votes on arms sales would quickly founder on the congressional calendar. Critical U.S. interests could suffer if the need for quick response to foreign emergencies was subordinated to the somewhat lugubrious congressional process. Our most recent attempts to reform the Department of Defense have obliged us to admit that, on occasions, we on Capitol Hill have been part of the problem. If our licensing procedures need to be changed, let us proceed boldly to reform them, but let us be careful before we inject new factors into an already complex process.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. I would first like to thank Chairman Glenn for allowing this meeting to take place this morning. I am sure that the Chairman may have been somewhat puzzled, a few weeks back, to receive a letter from me, as the Chairman of the Federal Services, Civil Service, and Post Office Subcommittee of this Committee, seeking permission for hearings on arms sales.

However, after this hearing I think we will all agree that one Federal service that the Government does indeed perform is that of facilitating international sales of arms.

Our government licenses today both arms suppliers, over 4000 of them, and the specific sales that they make, over 49,000 in fiscal year 1986.

We financially assist almost $6 billion worth of arms transfers a year, and we provide indirect subsidies for many sales that are called cash sales.

We waive all manner of prohibitions that otherwise would prevent sales, and we provide information and other marketing assistance to help make sales possible.

In short, the U.S. Government today is even more involved in the encouragement, merchandising, facilitation, and funding of international arms sales than Adnan Khasoggi.

And once you take a close look at the procedures by which the Government purports to regulate arms exports, we can hardly be surprised by the regulations which have surfaced in the Iran arms scandal involving middle men passing around our most modern weapons and charging exorbitant fees.

Every nation has a right to provide for its own self-defense. The United States has every reason to help our friends and allies build those needed defenses.

However, legitimate ends do not justify illegitimate means. And we all now know that certain illegitimate arms sales have put this and other countries into very serious trouble.

In the 1930s, the Senate established a special commission, the Nye Commission, to investigate arms sales. Not until 40 years later did the Senate authorize another serious enquiry, a special multinational corporation Subcommittee of the Senate Foreign Relations Committee.

What these efforts uncovered is more than a little interesting—bribery, corruption, double-dealing, counterproductive arms sales on an international scale that did serious damage to U.S. interests abroad and to the nation's own defense.

In the more than 10 years since the Senate's last serious enquiry into arms sales, we have witnessed a very radical changeover from an administration that tried unsuccessfully to restrict and limit arms sales to one that has tried to expand those sales.

We have witnessed a dramatic reduction in Government-to-Government arms sales to what may be an all-time low, as can be seen from our first chart today. We have seen an equally dramatic increase in commercial sales, to what may be an all-time high, as can be seen from our second chart before you.

We have seen an increase in Government-funded arms transfers from a level of about $2 billion a year in 1981 to a requested level of over $9 billion for the next fiscal year.

We have witnessed a rewrite of many of the regulations concerning arms sales, without any Congressional oversight whatsoever.

Just as an example of my own concerns, I think that every member of this Committee, and of the Senate, should be aware that of the over 49,000 arms-export license applications the State Department has processed in just one year, a grand total of 641 were rejected.

The witnesses this morning we will hear by no means represent all the Government's complex apparatus for overseeing the sales of arms, but they are the most important components: the State Department's Office of Munitions Control, OMC; and the Pentagon's Defense Security Assistant Agency, which oversee licensing and financing; and the Treasury Department U.S. Customs Service, which has the responsibility for enforcement.

Before any of the witnesses commence their testimony, I would like to read from the legislation that governs the Federal Government's arms exporting procedures. Section 1 of the Arms Export Control Act reads, and I quote:

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war, and to lessen the danger of outbreak of regional conflict, and the burdens of armaments.

United States programs for, or procedures governing the export sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

In light of this statutory policy directive, and in light of the seeming perpetual increase in the overall total of arms transfers our Government authorizes, I would like to ask this question this morning. Is your agency in the business of regulating arms sales, or is your agency in the business of facilitating arms sales? Which is it, and which should it be?

Our first witness this morning is Mr. William Robinson, who is the Director of the Office of Munitions Controls. His office is within the State Department and is known as OMC.

Our second witness will be Lt. Gen. Philip C. Gast, U.S. Air Force, who is Director of DSAA, the Defense Security Assistance Agency.

We are proud to have both testimonies this morning. I know that both of you have that you wish to submit prepared statements, or have prepared statements submitted to the Committee. I urge each of you to take no more than ten minutes in your opening statement.

First, I would like to recognize Senator Bingaman of New Mexico. Senator Bingaman, do you have an opening statement?

OPENING STATEMENT OF SENATOR BINGAMAN

Mr. BINGAMAN. Mr. Chairman, I would like to thank you for holding this hearing on the deeply important issue of federal licensing procedures for arms exports. In light of recent revelation regarding the transfer of arms to Iran and other nations, it is imperative that the Congress carefully examine and re-evaluate the laws regulating such transfers. It is also important for us to assess the effectiveness of and controls on the agencies within the Administration which oversee the sale and exportation of arms and munitions to foreign nations and interests.

I look forward to the testimony of the Director of the Office of Munitions Control, Mr. Robinson, and the other witnesses that have been called upon to testify today.

Thank you Mr. Chairman.

Senator PRYOR. Thank you. We appreciate your attendance this morning and know of your interest in this issue.

TESTIMONY OF WILLIAM B. ROBINSON, DIRECTOR, OFFICE OF MUNITIONS CONTROL, BUREAU OF POLITICO-MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE,[1] ACCOMPANIED BY CLYDE BRYANT AND JOE SMALDONE; AND LT. GEN. PHILIP C. GAST, DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY, U.S. AIR FORCE [2]

Mr. ROBINSON. Mr. Chairman, Senator Bingaman, I appreciate the opportunity to be with you this morning and talk to you about

[1] See p. 51 for Mr. Robinson's prepared statement.
[2] See p. 63 for General Gast's prepared statement.

the mission and functions of the Office of Munitions Control in the Department of State, of which I am the head.

Section 38(a)(1) of the Arms Export Control Act authorizes the President to control the export of defense articles and services. This authority has been delegated by Executive Order to the Secretary of State; and within the Department of State, the authority was delegated through the Under Secretary for Security Assistance and the Assistant Secretary for Politico-Military Affairs; and thence to the Director of the Office of Munitions Control or OMC.

OMC administers the U.S. Government program to control exports of defense articles and defense services, including related technical data. The main objective of this control is to further world peace, safeguarding the national security and foreign policy concerns of the United States.

OMC exercises its responsibility through a licensing process prescribed in the International Traffic in Arms Regulations, commonly called the ITAR. The ITAR is found in Title 22, Code of Federal Regulations, Parts 120-130. It defines the defense articles and services which constitute the U.S. Munitions List. It requires registration of manufacturers and exporters and defense articles and services; it prescribes policy and procedures for applying for licenses to export defense articles, defense services, and technical data.

The U.S. Munitions List, which is in the ITAR, enumerates the articles OMC controls. The Department of State, with the concurrence of the Department of Defense, decides what constitute defense articles for export control purposes.

When in doubt as to whether an item is covered by the Munitions List, we consult with the Departments of Defense and Commerce in a commodity jurisdiction procedure to determine whether State or Commerce should have licensing jurisdiction. Items by and large which are not controlled by the Munitions List are subject to Department of Commerce controls.

Applications for export authorization are required whenever Munitions List articles, including hardware and technical data, are to be commercially exported; are to be commercially exported temporarily, for demonstration or other purposes, and returned to the United States; commercially brought to the United States in transit through a third country, or for return to the country of origin; for disclosure to foreign nationals or export abroad, using information defined as technical data.

Licenses issued are valid for a period of 2 years.

In addition, proposed transfers to third countries of equipment previously exported from the United States under a Department of State license, proposed manufacturing licensing and technical assistance agreements, and amendments to existing agreements, must be submitted to OMC for approval.

OMC does not license munitions which are exported to a foreign country as part of a Government-to-Government, or FMS, transfer.

In fiscal year 1986, OMC processed over 49,000 license applications, manufacturing license and technical assistance agreements, and requests for advisory opinions and commodity jurisdiction de-

terminations. Over the past several years, this figure has increased at an average annual rate of 10 percent, while the size of OMC's staff has remained steady at about 30. Five licensing officers review and decide the bulk of OMC's cases. I have a Special Assistant for Space and Nuclear Affairs who handles space and nuclear-related matters.

OMC reviews each application on a case-by-case basis to determine that the proposed export is consistent with: One, applicable statutes, precedents, and the ITAR; and two, U.S. security and foreign policy, and the furtherance of world peace.

Approximately 80 percent of the applications received by OMC can be acted on without review by other offices; most export authorizations are promptly approved or denied and returned to applicants within 2 weeks. The remaining cases, because of destination, quantities, and/or commodity significance, may be referred for review to other offices of the Department and appropriate federal agencies to ensure that an approval would be fact further world peace, and the security and foreign policy of the United States.

OMC conducts end-use checks through U.S. embassies and consulates overseas to verify information provided by U.S. applicants. Cases affecting U.S. arms control objectives and negotiations, and regional balance of forces are routinely referred to the Arms Control and Disarmament Agency. On security and technical matters, we seek the views of various offices of the Department of Defense. This normally includes the military service most familiar with the article being exported. We go to NASA, the Department of Energy, and other agencies. In matters implicating U.S. foreign policy concerns, the OMC may request the views of regional and functional bureaus in the Department of State.

We take final action on these applications based on interagency review. We reconcile any differences. If an application is denied, a request for reconsideration may be submitted.

The Arms Export Control Act of 1976 contains various reporting and notification requirements for arms transfers and commercial arms sales. These reports and notifications are coordinated with the Bureau of Legislative Affairs in the Department of State.

Section 3(d)(3) requires the President to submit to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee, a written report before consenting to the transfer of any major defense equipment valued at $14 million or more, or of any defense article or defense service valued at $50 million or more, licensed or approved under Section 38. This report must include the name of the country or international organization, a description and cost analysis of the proposed article or service, the name of the proposed recipient, and the reasons and the date on which the transfer is to be made.

Section 25(a)(1) requires the President, as part of the annual presentation to Congress for proposed security assistance programs for the following fiscal year, to submit a report on commercial arms sales. This report must cover all sales of major weapons or weapons-related defense equipment for $50 million or more which are likely to result in the issuance of the license during the coming fiscal year. This part of the report, which is prepared as of Febru-

ary 1 each year, is based on pending license applications and agreement approvals.

Section 36(a)(4) requires the President to submit to the Speaker of the House of Representatives and to the Chairman of the Senate Foreign Relations Committee an unclassified report, no later than 60 days after the end of each quarter. This lists all licenses and approvals, for the export to each foreign country and international organization, of major defense equipment, by category, sold for $1 million or more.

Section 36(a)(8) requires the President to submit to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee an unclassified report, no later than 60 days after the end of each quarter, describing all political payments, contributions, gifts, commissions, or fees reported to the Secretary of State pursuant to Section 39. The report includes the name of the person who made the payment, contribution, gift, or fee; and the name of the person or sales agent receiving it; the date and amount of the payment; and identification of any business information considered confidential.

Section 36(c)(1)——

Senator PRYOR. We are going to get right into these questions. We have also, adjoining Senator Bingaman and myself, Senator Sasser of Tennessee. I know both of these Senators have some questions.

General Gast, if I might, I think that we will delay for a few moments your oral statement. We will go forward with questions to Mr. Robinson, and then we will look at DSAA.

Mr. ROBINSON. Senator, may I add one thing here, please.

Senator PRYOR. Yes.

Mr. ROBINSON. I have with me, on my left, Mr. Clyde Bryant, who is in charge of compliance; and I have on my right, Mr. Joe Smaldone, head of the licensing division. I have them here so we can give you detailed answers to any questions.

Senator PRYOR. Very good. We deeply appreciate you bringing these experts.

Senator Sasser, did you have a statement that you wanted to make? Feel free to utilize this time.

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Mr. Chairman, I have one I will submit for the record, but I do want to commend you, Mr. Chairman, for holding this hearing on the important issue of Federal licensing procedures for arms exports. This has become a matter of great public interest of late, and I want to commend you for holding these hearings, and focusing public attention on possible inconsistencies in the procedures.

[Senator Sasser's statement follows:]

PREPARED STATEMENT OF SENATOR SASSER

Mr. Chairman, I commend you on your efforts to bring the important issue of federal licensing procedures for arms exports into the limelight. As recent developments indicate, the ramifications of transferring U.S. arms extend domestic politics, U.S. foreign policy, and national security. Indeed, international diplomacy and international stability are shaken by this often shady business.

Today, we explore the structure and regulatory functions of the various executive branch agencies involved in overseeing the sale, transfer, and retransfer of U.S. arms. This is a much needed inquiry as more U.S. arms wind up in the hands of unauthorized third parties. The United States, as a producer and exporter of some of the most sophisticated and deadly weapons in the world has a certain responsibility for its role in the injection of these weapons into volitile regions of the world. Examining the existing means of controlling the transfer of U.S. arms and evaluating their effectiveness is timely and critical if we are to get a handle on some crucial issues.

Senator PRYOR. Senator Sasser, thank you.

We also have a recent arrival and a very distinguished member of this Committee, Senator Mitchell of Maine. Senator Mitchell, would you care to make an opening statement at this time?

Senator MITCHELL. Mr. Chairman, thank you.

I have that problem greatest for public officials, I have laryngitis and a sore throat, a curse to me but a blessing for everyone else. I cannot make an opening statement even if I wanted to here.

Senator PRYOR. We are just glad that you are here.

Senator MITCHELL. The statement will be included in the record. I thank you.

Senator PRYOR. Without objection. Certainly, Senator Mitchell.

[Senator Mitchell's opening statement follows:]

OPENING STATEMENT OF SENATOR MITCHELL

Questions involving the sales of arms and munitions are not ones to be taken lightly. This hearing is not intended to probe the Reagan Administration's transfer of arms to Iran. However, the Iran Affair illustrates the significance which transfers of arms can have on the world stage.

Arms sales involve sensitive issues of American foreign policy; regional balances of power; collective security; human rights; and also, undeniably, the private interests of American arms manufacturers. A profound moral question also exists. The world is awash with weapons of violence and destruction—for which the United States must bear at least some of the responsibility.

For all these reasons, Congress has chosen to keep international arms sales subject to strict—but balanced—controls.

Through the arms export licensing process, responsibility for balancing these interests rests with the State Department and the Department of Defense. The U.S. Customs Service in turn is responsible for much of the vigilance and enforcement to make the overall system actually work.

Making the system work requires adequate resources; interagency coordination; international cooperation; up-to-date information and intelligence; and constant communication.

The question which concerns this Committee is whether it is all really working.

In recent months, headlines have shaken the confidence of the American people. They cannot help but wonder just how great is the arms traffic which flows from our shores—and to where?

Are even legitimately-licensed arms shipments which leave the United States ending up where they are supposed to? And are they being used for the purposes for which they were intended?

If not, then why not? And if not, then what do we need to do to make the system work? I look forward to finding the answers to these questions.

Senator PRYOR. Mr. Robinson, now, how long have you occupied your present position?

Mr. ROBINSON. Approximately 12 years.

Senator PRYOR. Your caseload of requests for commercial arms transfers has risen dramatically, is this correct?

Mr. ROBINSON. Yes, sir.

Senator PRYOR. Why do we have this rise in commercial arms sales? If you will just look at that chart over on your far right, you

would see a very dramatic upswing in requests for commercial arms licenses. Why is this?

Mr. ROBINSON. I would give you two fundamental reasons.

One, I think, compliance, involving customs at the ports. Items which are returned for repair must be issued a license to cover their transit. In past years, I think, the enforcement there was not absolutely what it should have been, and we have had quite an upswing in the numbers of transit licenses.

Second, I would say we are catching the tail-end of the FMS sale.

Senator PRYOR. We are catching—would you speak a little louder?

Mr. ROBINSON. Yes, sir. I am sorry. We are catching the tail-end of the FMS upswing in earlier years.

Senator PRYOR. Today the Government's sales are going down. The FMS sales are going down.

Mr. ROBINSON. I said the swell in earlier years, Senator.

Senator PRYOR. Now the commercial sales are on the upswing.

Mr. ROBINSON. We are licensing spares and follow-on support for those weapon systems sold earlier.

Senator PRYOR. We are licensing more than spare parts, now, in your office.

Mr. ROBINSON. That is right. And you see what we are licensing. We report it to the——

Senator PRYOR. Yes. Now, Mr. Robinson, here is an application to become an arms exporter. This goes to your office in the State Department, OMC, Office of Munitions Controls. Now, how many of these applications does your office process annually?

Mr. ROBINSON. As I stated in the testimony, we process a total of 49,000.

Senator PRYOR. Forty-nine thousand of these applications to sell arms in the last fiscal year. Is this correct?

Mr. ROBINSON. I think what you have in your hand is a DSP5. We have five or six types of applications, and that's one of them, but we don't get 49,000 of those.

Senator PRYOR. Now, how many people do you have in your operation to process these licenses, these requests?

Mr. ROBINSON. When I came to the office we had 30, and we tailed off over the years. I've been able to build it back up to 30 now.

Senator PRYOR. Now, how many licensing officers do you have at OMC at this time?

Mr. ROBINSON. I have five licensing officers.

Senator PRYOR. Five?

Mr. ROBINSON. Five licensing officers who work for a Chief of the Licensing Division, and a Deputy Chief; and as I stated in my testimony, I have an assistant who handles space and nuclear related matters.

Senator PRYOR. And it is also my understanding you're using paralegals at this time to help facilitate some of this paperwork in compliance. Is this correct?

Mr. ROBINSON. We are using paralegal for the purpose for which we got the paralegal—compliance. The paralegal are not issuing any licenses.

Senator PRYOR. They what?

Mr. ROBINSON. The paralegals are not issuing any licenses.

Senator PRYOR. Do they help process the licensing?

Mr. ROBINSON. That's what they're there for.

Senator PRYOR. And how are they trained?

Mr. ROBINSON. Mr. Bryant, would you—one came from the Justice Department, and the second from IRS—Mr. Bryant?

Mr. BRYANT. Both of the paralegals that we have at present, sir, were recruited from other government agencies and were already knowledgeable with regard to paralegal work. They are trained on the job, given instructions explicitly with regard to their particular functions.

Primarily they are engaged in the compliance area and deal with those licenses—or those applications, if I may, sir—with which there seems to be some particular problem which needs to be checked into.

Senator PRYOR. Now, if you would turn to the chart on my right and to your left, we see commercial sales and exports.

One, we see a very, very dramatic increase in requests to sell arms to foreign countries. We see that going off the chart, so to speak, $14.9 billion for fiscal year 1986, if all the sales are consummated.

I understand that a license lasts for 2 years and then expires.

Now, how do we actually know what the exports are? The red line, says that in 1985 only $2.3 billion of arms were exported. However, in the same year, the green line indicates that $9.9 billion of arms export licenses were granted. Why the discrepancy? How do you know exactly that only $2.3 billion of arms were exported?

Mr. BRYANT. When a license is issued, before an export can take place, the licensee must lodge that license with U.S. Customs Service. Also before export takes place, the licensee must file with Customs what is called a shipper's export declaration declaring that they are shipping the equipment, whatever it may be, under the specific license granted by the Department of State.

Customs annotates the back of that license to show that the export or exports have been made against that license. When the license is either completed or expired, they return it to the office of Munitions Control, where the information on the back of the license is taken from the license and entered into a computer system keeping track of exports against each individual license.

Senator PRYOR. Now let's just take our friend, Senator Sasser, here, for a moment, who's from Tennessee, and let's say that Senator Sasser gets tired of politics, and he's decided that he wants to get into something where he can make some real dough, so he wants to become an arms exporter, so he gets one of these DSP-5 applications, and he fills it out and sends it in to your office, and he applies for an arms license.

But to look at this application—am I correct, doesn't Senator Sasser have to have a letter of intent or a purchase order from some foreign country that they're actually going to buy a certain number of weapons, or a dollar value of weapons? Is this correct?

Mr. BRYANT. Let me go back a little bit, sir.

Anyone who is the business of manufacturing or exporting U.S. Munitions List articles must register with the Department of State——

Senator PRYOR. With OMC, with your shop.

Mr. BRYANT [continuing]. The notification to us that they are in this business. That registration confers no rights and very few privileges. For each transaction, one of those applications that you have up there in your hand must be submitted to the Department of State. It must be supported by a letter of intent, a purchase order—a contract of some sort. And in certain instances, it must be supported by a nontransfer and use certificate signed by the intended recipient of the goods.

Senator PRYOR. Do you mean that they have to sign an agreement that if this is sold to X country it will not be sold to Y country, in other words it will not be——

Mr. BRYANT. It will not be sold—I beg your pardon, Sir—it will not be sold to any country except as they get the prior written approval of the U.S. Government.

Senator PRYOR. All right, what controls does the other country have over those weapons, once they get into that country? What control does that country have, and what control do we exercise to make certain those arms stay in the original use country?

Mr. BRYANT. I do not know what control the foreign recipient may have, that is, the other country. They have export controls of their own. Major weapons systems, insofar as I am aware, sir, are only sold to foreign Governments.

Senator PRYOR. But we are selling today under commercial sales agreements F-16s, is this correct?

Mr. ROBINSON. The F-16s that I know of that have been sold to Greece is the only one that I know of.

Senator PRYOR. To Greece.

Mr. ROBINSON. And that is to the Government of Greece. That is not to some private person in Greece. And the Government of Greece has given us its assurance that it will not transfer those F-16s except as it gets the prior approval of the U.S. Government.

Senator PRYOR. It seems to me that you have an enormous amount of paperwork, clearing and looking at 46 to 50 thousand applications and licenses, and you have about five licensing officers. That's about 10 minutes per license.

Do you have an opportunity to really look and see who is applying for a license?

Mr. ROBINSON. I'd have to defer to Mr. Smaldone on that, sir. He addresses the licensing side.

Some of these licenses are very simplistic. They may be for a cartridge case for a rifle. In any event, when they are received, they are placed on a table before they are numbered. Mr. Smaldone or his deputies look at every one of them. I look at a great number of them myself, and I will let Joe take it.

Mr. SMALDONE. Mr. Chairman, the number of 49,000 license applications is indeed a large volume. I would like to elaborate on the staff that's available to review those applications.

I have a deputy chief and five licensing officers in the division. Including myself, that makes seven persons who are substantively involved in reviewing and deciding license applications.

In addition, there is a licensing officer who works for Mr. Robinson directly handling space and nuclear related cases. That gives us eight.

The Director himself, Mr. Robinson, and our Deputy Director are also involved in directly and substantively dealing with license applications that require their attention.

So, in short, there are ten people as opposed to the five which the licensing officer number alone may give a misconception, who are directly and substantively involved in making licensing decisions.

One of the first things that a licensing officer is trained to do is to make a review of the application, and to make a relatively quick decision as to whether or not there is sufficient information and documentation with the application to warrant a decision within the office or what to do next. That decision can either be approved, denied, or returned without action.

If a decision is made to seek additional information, then it is referred out to our other offices and agencies, as appropriate, to give us their recommendations on whether or not to approve it in accordance with the various policy and other considerations that may be involved.

We have also taken a number of steps internally, on the administrative side, to relieve the licensing officers of administrative burden and paperwork which can be better handled by clerical personnel, in order to permit them to review the license applications more substantively.

Senator PRYOR. And out of 49,000 license requests, you disapproved about 600 of them last year. What's the criteria for disapproving a license request application?

Mr. SMALDONE. In addition to those which are formally denied, there is another category of disposition which is called "return without action," and if you add the denials and the "returns without action" together, roughly ten percent of all the applications we receive are not approved for one reason or another.

Denials are generally emphatic denials for foreign policy or national security reasons. The other seven or eight percent returned without action are largely for failure to comply administratively with some aspect of the regulations, for instance, insufficient information, lack of documentation, failure to submit a contract, absence of signatures on the documentation, and things of that sort.

Senator PRYOR. What formal, written procedures do you have in OMC at this time for approving or disapproving a license?

Mr. SMALDONE. We start with the President's arms transfer policy, which you yourself made reference to in your opening remarks. From that we proceed to various other White House and departmental policies with regard to specific countries and specific weapons systems.

We have in hand requests from the Arms Control and Disarmament Agency to review applications relating to certain kinds of weapons systems in certain countries.

We have requests in hand from the Defense Department to review applications for specific technology or specific defense articles, oftentimes without regard to country. They're simply interested in that particular item.

We have the guidance furnished us from the regional bureaus in the department in regard to the specific countries of concern to them, and with regard to the way in which they would propose that we dispose of cases.

We have similar requests from the Bureau of Human Rights Affairs, identifying those countries which are of particular concern for human rights reasons, and asking that they be afforded an opportunity to review cases for those areas.

So with all these things, plus the various requirements of the regulations themselves, and our evolving relationships with countries with which we in the office remain abreast. For detailed analysis we refer them directly to the country desks in the department for their recommendations.

Senator PRYOR. It sounds like the other agencies, like DOD and others, have written formal guidelines. It sounds to me that OMC has no written formal guidelines. You are just using the guidelines of other agencies. Where are your guidelines in your agency?

Mr. SMALDONE. In OMC itself we have, of course, the International Traffic in Arms Regulations which form the regulatory and administrative basis for reviewing applications.

For guidance on whether or not a particular application ought to be approved, that becomes a policy judgment. As I have indicated, we have policy papers beginning with the White House and coming right on down through the bureaus in the department. We also, since most of our licensing officers have been in the office for a number of years, have developed a good feel and a good understanding of what our policies are.

None of this takes place in a vacuum because most applications have some previous reference base.

Senator PRYOR. Do you have a list of those people or those countries who have been, so to speak, debarred, or those individuals or companies who are no longer allowed to trade in arms. Do you keep that list?

Mr. SMALDONE. The list to which you refer, I believe, is the one published by the Department of Commerce. We do not ourselves have a published list of that sort. The Commerce Department does, and we do have copies of it.

Senator PRYOR. You have copies of the Commerce Department list, but you have no list of your own, is this correct?

Mr. SMALDONE. We do not maintain a published list, as the Commerce Department does.

Senator PRYOR. Why is that, now?

Mr. SMALDONE. I will have to defer that question to Mr. Bryant.

Mr. BRYANT. We have not had any major debarment cases except as such debarment cases have been in connection with a criminal prosecution. We have certain persons, if you will, in the legal term, in whom we are interested. But we do not publish a list of those persons.

Senator PRYOR. The Commerce Department does, and I am wondering why the Office of Munitions Controls does not.

Mr. BRYANT. I think the list that you are referring to by the Commerce Department, sir, is a list of actual formal actions they have taken to debar, that is, refuse persons' export privileges.

Senator PRYOR. Does that show up on your computer in OMC.

Mr. BRYANT. No, sir, we keep that on a published list that Commerce sends to us.

Senator PRYOR. I am going to allow my colleagues at this time to ask any questions. I will use the early bird rule. Senator Bingaman was here first, and then Senators Sasser and Mitchell.

Yes, sir.

Mr. ROBINSON. If it's all right with Senator Sasser, who has it, may I add one thing here, please?

Senator PRYOR. Certainly.

Mr. ROBINSON. You hit on the subject of people. It is a very important thing to me, and I appreciate the fact that you picked it up.

Now I have brought State Department manpower people in to survey us, picked up a couple of people as a result. I think our requirements are pretty well acknowledged by the Department of State. We are dealing with a time, where I am sure that you read in the paper, the Department of State is closing consulates overseas. There is a distribution of shortages, I presume.

In any event, I have a three-year program in to the Department of State for 15 people and additional resources. I have signed up voluntarily to have the OMB come in and survey us through their productivity program, which we hope will give impetus to our personnel requirements.

Lastly, I hope you'll help me—we have a little piece of legislation which will let us keep $100,000 worth of the fees that we receive for registration each year for software and various other computer and other administrative support.

Senator PRYOR. I will be honest with you, Mr. Robinson. I am not as concerned about the lack of personnel that you have as I am concerned about the lack of concrete procedures that you evidently do not have.

There evidently is a void there. You do not have any list of those who have been debarred. You are using the Commerce Department's list. You do not have a red flag system in the computer system of those who have been debarred or who are ineligible at this time to receive these licenses. I think that we are looking at a very major breakdown in procedure itself, and not just people.

Mr. ROBINSON. Well, I say this to you. I will provide an answer to that for the record, and I think you will get a little light on it when we do. It requires a legal statement, and I am not prepared to make it in public.

Senator PRYOR. Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Let me just ask about the 600 that were turned down out of the 49,000. As I understand it, you turn down people or deny applications because of: one, general policy; two, certain countries that the Administration has determined you should not permit transfers or sales to; and three, certain weapons systems.

Could you give me an indication of how many of the 600 were turned down because the sales were to particular countries or were intended to go to particular countries?

Mr. SMALDONE. Senator, it is hard to differentiate the country from the item concerned, as well as other considerations that may be involved in the application.[1]

I can tell you that of those denials that were formal denials as opposed to returns without actions, of which some were in fact denials—for instance, if we receive an application for Iran or Iraq, we simply return it without action as being inconsistent with U.S. foreign policy. We have a form on which that statement is prerecorded.

But with regard to those cases that go into a review, that is to say, it is not clear to us whether or not it ought to be approved or denied, and therefore we undertake interagency consultations—if the decision is to deny it, we then render a formal denial.

I can give you some examples of the reasons for which cases are denied.

For instance, we have a national policy with regard to the release of classified military information to foreign governments. If the proposed export would involve the export of classified information, for classified weapons, to a country which is not eligible in accordance with this policy, it is automatically denied.

Senator BINGAMAN. So you do have a list of the weapons that you do not permit the export of, except to our allies? Is that right?

Mr. SMALDONE. The list is not put together in that form, sir, but in the course of the review of that application by the Defense Department, which establishes classification guidelines for each of its weapons systems, in the course of that review, the weapons system proposed for export will be checked against the policy criteria for that country that have been established with regard to its access to classified information.

Mr. ROBINSON. Senator Bingaman, may I add something there, please?

Senator BINGAMAN. Yes, go right ahead.

Mr. ROBINSON. It is against the law for munitions items to be licensed for Chile. We get applications for Chile nevertheless; they get turned down. So you could say that was a——

Senator BINGAMAN. So some of the 600 were applications to go to Chile.

Mr. ROBINSON. Well, ordinarily, we would not even number that one.

Senator BINGAMAN. Excuse me?

Mr. ROBINSON. Ordinarily we would not even number it. We would not log it in. We would just send it back.

Senator BINGAMAN. So that would not be a denial.

Mr. ROBINSON. Well, it might and it might not be.

Senator BINGAMAN. I am just trying to figure out what specific criteria you have. I think Senator Pryor asked that. I am just wondering, if I was trying to export arms, would I be able to get somewhere a written list of criteria that I would have to meet in order to get that application approved.

Mr. ROBINSON. I will let Joe answer that, but let me just say one thing to you. The Arms Control and Disarmament Agency, if they

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[1] See Question 3 and response on p. 56.

give us a denial, that denial is never overridden at our level, and it is hardly ever overridden. It would have to be overridden higher up in the Department of State. So we have arms control. We have the Human Rights people.

Senator BINGAMAN. I understand that you have got other agencies that have some discretion to say no.

Mr. ROBINSON. These are where these denials are coming from.

Senator BINGAMAN. But I am just wondering if you have a set of inhouse criteria that people have to meet to get these applications approved, other than just, they have got to have complete information?

Mr. SMALDONE. Senator, if I can complete an informal list of some of the typical reasons for which cases are denied, that may——

Senator BINGAMAN. Let me just get an answer to my question, first. Do you have a written set of criteria that must be met in order for an applicant to get their application approved?

Mr. SMALDONE. The written criteria are those primarily of the regulations, which you, as a potential exporter, would need to comply with.

Beyond that, there is a question of a decision. Does this application get approved or not?

Senator BINGAMAN. The regulations are the procedural regulations about what people have to file.

Mr. SMALDONE. Precisely.

Senator BINGAMAN. But there is no written set of substantive criteria that states, if you are trying to export to this country, this particular type of item, you can not do it. There is nothing like that that——

Mr. SMALDONE. Not with that degree of specificity. As I say, we have policy memos, policy references, policy statements, from the White House right on down into the Department, and from other agencies.

Senator BINGAMAN. But they are not put together in any kind of form that for example, this committee, or an arms exporter, or anybody could get a written description of the criteria.

Mr. SMALDONE. They are not in the form in which they exist now, sir, which are internal executive agency documents, many of which are classified. We could only furnish broad conditions that have to be satisfied, which can only be expressed in terms of whether or not it is consistent with foreign policy in varied ways.

Senator BINGAMAN. Is the list of 600 that you turned down classified?

Mr. SMALDONE. The particulars would not be classified but they would be protected as proprietary information. That is to say, the information that we receive from companies in connection with their applications is by law treated as being proprietary.

Senator BINGAMAN. But could you give us a list of the 600 you turned down last year?

Mr. SMALDONE. Yes, sir.

Senator BINGAMAN. The applicants, the ones that were turned down, and the explanation for why you turned them down?

Mr. SMALDONE. It would be a hell of a job, sir, administratively, but we could provide that kind of a list. The information is available for a compilation.

Senator BINGAMAN. But there is nothing classified about the denial. It is public knowledge, or I would think, be public as to why you turn these people down.

Mr. SMALDONE. Sir, the specific reason for denial will not be indicated in what we advise the applicant. That is to say, we simply tell the applicant that it was denied either for foreign policy or national security reasons, and then we invite their query if they wish to know the particular reason, for instance, if it was denied on human rights grounds, if it was denied on arms control grounds, if it was denied on national security grounds relating to the technology concerned, or whether a prospective diversion might be involved in the transaction.

So the particulars are not made a matter of public record.

Senator BINGAMAN. Let me ask about—I think your colleague earlier referred to the fact that you have a list of persons in whom you are interested. Could you be more precise as to—do we turn down significant numbers of people because they are undesirables, or they have some type of criminal record? What is the criteria there?

Mr. BRYANT. No, sir, we do not. The criteria is whether the application—that particular application that we are addressing—is in the furtherance of the foreign policy and the security of the United States. The fact that a person may have a criminal record is not a basis for denying an application to that person, per se.

Senator BINGAMAN. So the fact that a person has been convicted of a felony, and served time, is not an adequate justification for turning them down for the application.

Mr. BRYANT. Not under the statute under which we function, sir.

Senator BINGAMAN. Okay. Is there any kind of criminal behavior or conviction that serves as a ground for you turning down an applicant?

Mr. BRYANT. No, sir, but any such behavior or conviction that we were aware of would cause us to look at the applicant very closely.

Senator BINGAMAN. I am having trouble understanding why you are looking at them closely if you do not have a legal basis for turning them down no matter what you see.

Mr. BRYANT. We would look at them closely to make sure that the application is in fact in order, and that the proposed transaction is in fact a bona fide transaction.

Senator BINGAMAN. So if they do their paper work properly, then your scrutiny of them is complete. You are satisfied.

Mr. BRYANT. No, sir, not necessarily. They may present to us proper paperwork, and we may then do what is called an end-use check.

We would go to our embassy in the foreign country where the export is proposed to take place. We would advise our embassy that we have the application before us, and we would give the embassy the full particulars of that application. We would ask the embassy to check into the transaction and advise us as to whether it is an appropriate transaction, and recommend to us whether we should approve the application.

Senator BINGAMAN. What criteria would the embassy use to determine if it was an appropriate transaction?

Mr. BRYANT. They would investigate as to whether that foreign country is actually buying that equipment, and is in need of it, and would come back and advise us.

Senator BINGAMAN. But now as I understand it, this covers sales to others than foreign countries.

Mr. BRYANT. Yes, sir, or that foreign company. For example—well, someone had mentioned the F-16 sale earlier, not an FMS sale, but nonetheless one in which we are involved, because U.S. companies are providing parts to foreign countries for manufacture or refinishing to come back to the U.S. for inclusion in F-16's.

Senator BINGAMAN. But that is a particular case because that is a sale to a government. A lot of these applications are for sales to foreign individuals, are they not, or foreign corporations?

Mr. BRYANT. Foreign corporations, yes, sir—generally in connection with the manufacture of or support of equipment owned by their particular foreign government.

Senator BINGAMAN. But is that a requirement?

Mr. BRYANT. I do not follow you, sir?

Senator BINGAMAN. Suppose a foreign corporation made an application to buy, or somebody made an application to sell to a foreign corporation—do you require that that sale to a corporation be intended to support a particular foreign government activity?

Mr. BRYANT. Generally speaking. Or it can be—let's take an example.

The banking machines that you use—you put your card in, code them, and they cough up the money that you said you wanted. Those contain encryption devices. Because they contain encryption devices, they are subject to our control. Their export from the U.S. to foreign banks requires a license from my office.

Senator PRYOR. Twenty-seven million, I believe, in dollars, was sold to South Africa—just such machines, is this correct, in 1986?

Mr. BRYANT. I do not know the amount, but I would not be surprised.

Senator PRYOR. Excuse me, Senator Bingaman.

Mr. BRYANT. The government had nothing to do with that transaction except as it regulates banks, wherever it may be.

Senator BINGAMAN. Let me ask about TOW missiles.

Mr. BRYANT. All right, sir.

Senator BINGAMAN. If I was a foreign corporation and wanted to buy TOW missiles, and found somebody who was willing to sell them, what would you require to be shown before you approved the application?

Mr. ROBINSON. Senator, all TOW missiles go foreign Military Sales.

Senator BINGAMAN. They all do? You do not cover that at all?

Mr. ROBINSON. We have never approved or had a requirement for the export of TOW missiles, nor Hawk missiles, except for the early Saudi Arabian program.

Senator BINGAMAN. You did Hawk missiles for the Saudi Arabia program?

Mr. ROBINSON. Early program, old Hawk missiles we did license. But there have been no Hawk missiles licensed by the Office of

Munitions Control since that time, so it is fair to say that in the modern day we have never licensed a Hawk missile or a TOW missile.

Senator BINGAMAN. How is a decision made as on whether your office licenses Hawk missiles? You did say that you license the sale of some Hawk missiles?

Mr. ROBINSON. Early on.

Senator BINGAMAN. Early on, and you have not since licensed any sales of Hawk missiles? There have been a lot of sales of Hawk missiles since then, have there not?

Mr. ROBINSON. General Gast would have to answer that, but I assume so.

Senator BINGAMAN. Who decides whether your office is in the loop?

Mr. ROBINSON. It is just like the F-16's. All F-16 sales have been FMS except the one to Greece. That determination is made at a higher level in the State Department than me, and in coordination with the Defense Department and presumably NSC. We learn and we are told how it will be, but General Gast is going to talk about that.

Senator BINGAMAN. I think I am about to run out of time. Let me ask one other question, and then I will defer to my colleagues here.

This chart that Senator Pryor referred to shows a very substantial increase in the number of approved licenses in 1985. Of course it doesn't seem to have any figures for actual exports.

Is it a fair assumption that the figure for actual exports will also jump dramatically in 1985, or would that happen in 1986? Or is there really no correlation between the number of licenses approved and the amount that is exported?

Mr. ROBINSON. I would like to say one thing to you. The one big factor here that drives this—the licenses are good for 2 years. If a corporate person, as we call them, gets a license for $50 million, and in the first 2 years exports $2 million, 2 years later they come back for $48 million more, or they may come back for $36 million. There is an awful lot of repetition there.

Senator BINGAMAN. I guess the answer is that there will be a very substantial increase in the number of items exported as a result of that increase in the number of licenses approved. Is that what I understand?

Mr. ROBINSON. The granting of a license is an authorization to export, not a requirement. And if the transaction falls through, the licensee may never use that license. As Mr. Robinson pointed out, let us assume that we grant a license today for $50 million. That license is good for 2 years. Over the first 2 years, they may export $5 million against that license, and then it is expired. They have got to come back in for another license. They will come back in for a $45 million license.

Senator BINGAMAN. Let me just ask you one more time——

Mr. ROBINSON. That is a repeat—there is some repeat business in there.

Senator BINGAMAN. Let me just ask you one more time, and then I will quit. Starting in the beginning of 1985, as I read that chart, and I am just assuming it is accurate, there was a dramatic in-

crease in the number of licenses approved. It went from $9.9 billion up to $14.9 billion. Now we do not have any indication, at least on that chart, as to a corresponding increase in the number of actual weapons or spare parts export.

You would expect that to follow, wouldn't you?

Mr. ROBINSON. I would expect it to follow but not parallel it.

Senator BINGAMAN. Not exactly parallel.

Mr. ROBINSON. It will probably follow it at a much lesser rate because the transactions will take longer to complete.

Senator BINGAMAN. But some time in the 2 years following the issuance of the licenses, you would expect a significant increase in the amount of exports.

Mr. ROBINSON. You should see an increase.

Senator BINGAMAN. I will stop there, Mr. Chairman, and let these two patient colleagues ask questions.

Senator PRYOR. Senator Sasser.

Senator SASSER. Thank you very much, Mr. Chairman.

Mr. Chairman, in a flight of fancy a moment ago after your opening statement, you asked what if I should want to get into the business of selling arms and make some fast money. I want to assure you that there is no possibility of that occurring.

I recall that when I was growing up—not too far from your native Arkansas—I remember my grandmother whispering about people that were, in those days, called powder merchants. If you will recall what that was, some of them bought and sold armaments during the Civil War, and later during the First World War. They were looked down upon as outcasts. That was something that respectable people simply did not do.

I sometimes wonder what she would think of this world that we live in now, where you pick up slick magazines that are full of nothing but advertisements of instruments of death that are manufactured, marketed in this country and around the world—all over the free world and behind the Iron Curtain.

I think one of the tragedies of our times is the money that is wasted on the manufacture and sale and promotion of sale of armaments. I am sure every Senator sitting in this room today has been in small countries in which maybe as many as 50 percent of the children die of gastrointestinal diseases before they are 8 or 10 years of age from drinking filthy water because there are no sewers. Yet that little country finds the money to buy the F-5's, finds the money to buy the armaments that are needed many times just to salve the ego of those who might be in temporary positions of power in that country.

So I want to assure you, Mr. Chairman, that after many years in politics I might need the money. I do not need it badly enough to go into that business.

Now, let me direct my questions to the panel here.

During the latter part of the 1970's, President Carter issued a letter that was dubbed the "leprosy" letter, in which he tried to discourage United States officials abroad from initiating or facilitating discussions on weapons sales with foreign governments, and to discourage marketing representatives from U.S. corporations from doing likewise. I assume this was an effort on the part of the

Carter administration to dampen the enthusiasm for the sale of weapons abroad.

I was wondering, what sort of impact did that "leprosy letter" issued by the Carter administration have on the activities of the Defense Security Assistance Agency?

I guess you would be the person I would address that to, General Gast.

General GAST. Senator, of course I was not present during that time period, but obviously during that period the Carter administration was concerned about arms sales, and took the position that anyone who favored an arms sale had to be the advocate, and not object to it.

There was a reduction in sales. There is no doubt about that, although, I think it is safe to say, although toward the end of that administration there had been some reversals in the policy, current the leprosy letter had not been withdrawn until the Carter administration.

Senator SASSER. With the advent of the "leprosy letter" and the decline of U.S. arms sales as a result of that, do you have any information as to whether or not there was a resultant decline in arms sales by other countries in the free world and Soviet bloc countries, or was this unilateral on the part of the U.S.?

General GAST. It was unilateral on the part of the United States.

Senator SASSER. But did it have the impact of lowering arms sales from other free-world manufacturers?

General GAST. Absolutely not.

Mr. ROBINSON. Can I say something here?

Senator SASSER. Yes, Mr. Robinson.

Mr. ROBINSON. What we were talking about was the so-called P.D. 13, Presidential Determination 13, and the "leprosy letter"—industry gave it that name—precluded, unless the Department of State gave specific authorization—precluded embassies from helping U.S. industry in its marketing in foreign countries.

A parallel piece to that was an approach made by the Department of State to foreign governments in an attempt to get them to agree to reduce their levels of sale, and having the U.S. reduce its levels of sales. This broke down when the Soviets refused.

Senator SASSER. Have the activities of the Defense Security Assistance Agency changed as a result of the Reagan policy which rescinded the "leprosy letter"?

General GAST. No, sir, I would say that it has not. Our activities, since 1971 when we were formed, were to be sure that the programs that are approved by the State Department and agreed upon by the Secretary of Defense or his principals would be effectively implemented.

Senator SASSER. Does the Defense Security Assistance Agency have any role in monitoring or regulating any of the defense trade shows in which the weapons are shown to prospective buyers?

General GAST. None whatsoever. We are not in the business of promoting sales, nor is the Defense Department as a whole.

Senator SASSER. The media occasionally run stories about arms that have been legally purchased here in the United States, but later diverted or retransferred to foreign countries without U.S. authorization. How does the Defense Security Assistance Agency

monitor compliance with the end-use agreements on items sold in the FMS program, for example?

How do we monitor what ultimately happens with those weapons? Say we sell the weapons to—just pull the name of a country out of the air, Panama. How do we monitor what happens to them after that?

General GAST. Before I answer your question directly, I would like to go back a little bit, if I may, Senator. There is no country that I am aware of that is not fully, or rather fully aware of the concerns in the United States, both among our citizens, and certainly among the Congress and the Administration, that there will be illegal arms transfers, that is to say, that they would transfer them to another agent other than what they were sold for, or use them for reason other than what they were sold for.

There is ample evidence that shows what happens when that has occurred. Support has been withdrawn in the past by our government, and there has been a great concern expressed for the Congress and its oversight role. The law that covers foreign affairs—if you see it, it is about that thick.

So they are very aware, the principals in each country, of the danger of losing trust with the United States. And each of our agreements, when we sell something through the foreign military sale system, there is a standard form—it is called the DD 1513. It has all the provisions of the law in it, and policies that are added. It becomes—when the sale is finally agreed to by signature, from my agency as well as an agency in the other government—it becomes a binding agreement. One of those agreements is that they shall not transfer the equipment without the written permission of the United States to do so.

So any country or official that decides to do that, they certainly are going to be running counter, not only to a legal concern in the United States but certainly the concerns of the Congress and the Administration and all the wrath that that brings or all the concern that it would bring.

The people in the country, of course, in the whole embassy team, are very mindful of these regulations, and of course are not being obtrusive about it, but are always mindful that they need to chase down any rumors if they come.

Our own industry is concerned about it, and if they see something that is being transferred to someone else, either out of a sense of competitiveness, or because they believe that laws should be supported, quite often come to us or to the State Department.

The intelligence community has a constant stream of reporting—both the CIA, the DIA, and others, of alleged transfers. All of these mount up and when there seems to be sufficient evidence to where a country should be approached, the State Department does so, usually with our knowledge. We'll go to them and say, we understand, and there is a dialog that has developed.

Does that satisfactorily answer your question, sir?

Senator SASSER. The narrow question was: how does the Defense Security Assistance Agency monitor compliance?

General GAST. Through all those ways, and through messages, constant dialog, watching it, intelligence reports, our people that are in country—we have Security Assistance Offices in each coun-

try, sometimes they are called MAAGS. They are part of the country team. They gain that information.

But because a sale is a sale, in today's terms, we do not have people there who actually go around and count those tanks or those airplanes. It is a sale, but nevertheless we feel the system is pretty good, and it would detect any illegal transfers, maybe not the first time, but certainly the second.

Senator SASSER. I suppose, General, the answer to the question is that the Defense Security Assistance Agency itself does not have primary responsibility for monitoring compliance. Is that the answer?

General GAST. The State Department—the State Department, sir.

Senator SASSER. So compliance monitoring is done by the State Department ADI located in the country to which the arms are transferred.

General GAST. That is affirmative, yes, sir.

Senator SASSER. But there is no report directly back to the Defense Security Assistance Agency about what's happened to the weapons once the sale is approved and the shipment is made.

General GAST. Well, no, we do not know that they go to Base X or to warehouse so and so. We believe that the system is going to really serve as a deterrent for anyone illegally using them.

Senator SASSER. Well, how are efforts to monitor the end use coordinated? Who has the responsibility for coordinating the efforts to see how these weapons are ultimately used or where they ultimately end up?

I have a sense that maybe everybody is responsible, but nobody is primarily responsible. I have seen what happens in government when nobody has a primary responsibility.

General GAST. If my response added to the confusion of that, I regret it very much, because it clearly is the State Department who is, among other things, you might call the watchdog, or is the agency that will collect all information.

Senator PRYOR. Excuse me. Would that be OMC within the State Department?

General GAST. The PM, Political and Military Affairs. The President delegated to the Secretary of State, and then to this office. And there are others, of course, within the State Department, the bureaus, that watch it.

But one of the conditions again, Senator, in the LOA—and, by the way, I believe it applies as well on a commercial sale; I can't speak to that—is that the country will not use the signed agreement other than what it is intended to be. That's a tremendous deterrent, I think, an agreement and understanding. Through various sources, one can determine if it has been used for other than was intended.

Senator SASSER. Let me just ask you this question—and this may go to Mr. Robinson also. I assume there are certain countries whose purchases are more thoroughly scrutinized than others. They are more thoroughly scrutinized for evidence of overstocking, for example, and there are certain countries who have more potential for retransfer of the weapons, I assume, than others. Is that a fair statement?

General GAST. What you have said on the first two is absolutely correct. By law, the Congress has expressed its concern on that to the foreign military sales system. NATO, or the alliance countries, get far less scrutiny in time to be reviewed by the notification procedure, when we notify them. And so it is safe to say that any sale to a NATO country is going to receive less attention, and now Australia and Japan have been included within that.

So far as whether certain countries get more scrutiny, in this context they do. Where we give military assistance—that is to say, appropriated dollars—they're going to have more scrutiny, but primarily, in working with the country to assure that they get the most defense capability out of those dollars. So we will work more closely with them than the cash countries such as Germany or whatever, of course, who is fulfilling the needs for the alliance.

Senator SASSER. Are there certain countries that are exempted from the review of what happens to the weapons after they are sold to them?

General GAST. Not that I'm aware of, sir. Certainly not.

I might add, Senator, as you may know, military assistance program funds, what are called MAP funds, cannot be used for commercial purposes; that is to say, those funds may not be used for commercial sale.

Senator SASSER. Mr. Robinson, are license denials for foreign military sales ever based on intelligence information?

Mr. BRYANT. They can be, yes, sir.

Senator SASSER. What level of clearances do your license officers have? Are they cleared for top secret department information?

Mr. BRYANT. They are cleared for top secret, sir.[1]

Senator SASSER. Well, how is intelligence information factored into the license review process?

Mr. BRYANT. It depends upon whether the intelligence information is directed at a specific transaction. Well, let me give you an example.

We get some intelligence information that a transaction has taken place. We would check first within our office to see if we had licensed that transaction. We would check second to see whether we had received an application that might relate to the transaction, and if the first two were negative, then we would apprise the appropriate licensing officer and the Chief of the Arms Licensing Division of the intelligence that we have and ask them to keep an eye out for such a transaction.

General GAST. May I add something, Senator?

It was pointed out a little earlier by Mr. Robinson that a good number of the commercial sales come over to the Defense Department for review. The lead agency in the Defense Department for those licenses is the Defense Technology Security Administration, which has several people who work on this. I would not say they are the most knowledgeable about our technology transfer concerns and how it's being used, but they are very knowledgeable and may very well be the most knowledgeable. So any intelligence report at all that has to do with the care and use of technology is going to be

[1] See p. 62.

well-known by these individuals who work for Mr. Perle and Mr. Bryen.

Senator SASSER. Mr. Chairman, I will defer to Senator Mitchell.

Senator PRYOR. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Gentlemen, I thank you for your answers to the questions which have been asked regarding the details of the program. I will get to that in a moment.

I would like to ask you a somewhat broader question.

The unfortunate experience of mankind is that, throughout recorded history force has been used as a means to resolve disputes between individual states and nations. But a layman must have the impression that the extent to which it is used has increased dramatically in recent years, at least in part due to the ready availability of weapons of destruction. To one not an expert in the area, it appears as though the world is awash in weapons and that the ready availability of a wide range of means which one man can use to kill another is a major contributing factor to much of the turbulence and unrest in the world.

You deal in this in your daily lives, perhaps in a narrow sense. But I would like to ask you to step back and tell me, if you can, what's wrong? What should we do to change this? Is our national interest being advanced by the massive distribution of all forms of weapons around the world? Is that one of the attributes of world leadership in which the United States should take pride? Do any of you have any comments on that aspect?

Mr. ROBINSON. I think I would prefer to pass, thank you, sir.

Senator MITCHELL. I beg your pardon? I didn't hear you.

Mr. ROBINSON. I would prefer to pass, thank you, sir.

General GAST. I have some comments, Senator.

The first thing I would like to say is that I know of no country in the last ten years that has received any substantial arms whatsoever from the United States, through either commercial sale or an FMS sale, that has attacked another nation. That cannot be said about the Soviet Union, and it cannot be said about some others.

Because of the laws and procedures and policies we have, we only provide arms for legitimate reasons. And because of our planning process and our close contact with heads of states, and their understanding of how these weapons will be used, that is for self-defense, either to maintain internal or regional stability, we have an understanding and arrangements that are laid out, largely by the foreign policy of our Congress by the enactment of laws.

On the other hand, if we have failed to provide for the legitimate concerns of a country sometimes, it is because we don't sell for policy or technology reasons. And sometimes we do not agree to sell a particular item, if it uses our financing, and we don't think it is of high military value. But where those needs are not met by us to go, they meet them from other sources. They get them from the Soviet Union, such as Jordan having to turn to the Soviet Union. They cannot buy them from us. They go to other western suppliers who do not have nearby the controls that we have, or the same interest we have.

Our policies and the enforcement of the law together with attempts by the administration to reduce the numbers of arms sales

around the world have not been successful, sadly. But we have to acknowledge that and the administration would acknowledge that. I think the policies have been supported by the Congress through the enactment of the laws over the last 5 years alone, and financing. If one was to take account of all the foreign policy objectives that were established, most have been met.

The problem then becomes, if we are not to provide——

Senator MITCHELL. Excuse me. Did you say that most American foreign policy objectives——

General. GAST. Within the AECA, and within the foreign policy, yes, sir, with the use of the sale of arms, or the provision of financial assistance. Lebanon is a notable exception.

But there are countries who are selling arms and this should be of concern to all. I think what we have to continue to do, and it is well supported, is to meet legitimate requirements and yet express concern about how the arms are used.

Now, I believe Senator Sasser mentioned his concern about countries buying F-5's, for example. The military assistance programs around the globe, I believe are pretty well tailored to the countries' needs and their affordability. I believe the first thing that should be remembered when it comes to security assistance is, that of all the foreign aid given to countries, 60 percent of it is economic and only 40 percent is military assistance. But if one were to look at other than the NATO countries, and Egypt and Israel, which take up 75 percent of security assistance money, only 15 percent is available for the rest of the world. And if one was to look at Africa, south of the Sahara, 25 percent is. And those don't buy F-5's. They buy things like helping them in their coastal security, to build bridges, civic action things, to buy small numbers of armored cars, but they are not of an offensive nature.

Senator MITCHELL. Well, I appreciate your answer, General. I would make two comments about it.

The first is that it is obvious that we are engaged in historic and worldwide competition with the Soviet Union, but I think it induces a frame of mind in our country in which everything we do must be measured in relation to what they do. The fact is, I think we are different. I believe our system is better and superior. I don't think that American actions ought to be measured by Soviet standards. If Mr. Gorbachev tomorrow proposed building 10,000 statues of Lenin in Red Square, I don't think we should respond by building 10,000 statues of George Washington in the heart of Washington, DC. That is to say, our actions should be based on our own ideals, our own principles and our own interests.

I think the most telling part of your answer really is that this is a worldwide problem and arms are available everywhere. Unfortunately, for many countries, it is an important and essential ingredient of their domestic economic situation. Therefore, as you point out, if they don't get them from us, they get them elsewhere.

General GAST. I totally agree with you, Senator, that we should not mirror image in any way the Soviet Union. I hope none of our policies do, and I want to assure you that we're not in an arms race. You know, this administration, or certainly the previous one, is not going to sell something to try to get the business, nor is it going to sell something it thinks does not bring stability.

Senator MITCHELL. The chart that Senator Pryor referred to, to your left, entitled "Commercial Sales and Exports," and the chart here immediately behind me, entitled "Premier Growth and Caseload," permit the drawing of at least one inference that while a system has been established within this country to regulate the flow of arms from this to other countries, a substantial traffic also exists in arms outside that system.

I would ask any of you who wish to comment, do you believe that to be accurate? Is there extensive trade in arms which occurs outside the legal system which has been described here this morning?

Mr. BRYANT. I don't believe it's true with regard to arms of U.S. origin, sir. I cannot speak for arms from other countries. But of U.S. origin, no, sir.

Senator MITCHELL. Anybody else?

General GAST. Well, to say there isn't any would be wrong because there surely is. There's enough dishonest people in all walks of life that are going to try to do something like that. The question is, is it really substantive or is it enough to where either the various departments in the Government, including Justice, can stop it, or Customs or whomever.

There have been examples, of course, where companies have tried to get equipment to another country the system could be built to be sold. Some of those companies have been detected, one way or the other, and have been debarred in criminal action that's been taken against them. We have all worked to try to understand the level of activity that's out there, and we do not determine the same level that it appears to be found when you look in the press. That doesn't mean we're not worried about it or not concerned about it. We certainly are. But I do not believe that it is nearly the level that some others believe and report.

Senator MITCHELL. General, your agency is responsible, is it not, for government-to-government foreign military sales?

General GAST. Yes, sir, it is.

Senator MITCHELL. Are all transfers of weapons by any agency of the U.S. Government covered by the procedures administered by your agency?

General GAST. No, they're not. My agency is responsible for the implementation of those things in the Foreign Assistance Act and the Arms Export Control Act, those two documents that are covered in my testimony. That is, government-to-government sales through a foreign military sales system. There may be arms transferred through another mechanism that is not covered by those laws, sir.

Senator MITCHELL. So, in effect, the scope of your jurisdiction is determined by those two Acts?

General GAST. That's true.

Senator MITCHELL. And what you're saying is there may be arms sales made by the U.S. Government or an agency thereof which are outside the scope of those two Acts and, therefore, outside the jurisdiction of your agency?

General GAST. Well, there's not very much of that, and I'm sure you may have in mind the Iran revelations, perhaps. But it only occurs as a result of a presidential finding, when they would use another system.

Senator MITCHELL. So, then, if I may repeat and summarize, the jurisdiction of your agency is established by the two Acts to which you referred——

General GAST. That's true.

Senator MITCHELL [continuing]. Which cover all sales of arms by the U.S. Government or any agency thereof, to other governments——

General GAST. That's right.

Senator MITCHELL [continuing]. Except those that may be based upon a presidential finding?

General GAST. Yes, sir, the oversight by the Intelligence Committees. There are established procedures and policies for those.

Senator MITCHELL. I've got some other questions but, because of my laryngitis, for which I apologize, and your time, I will submit them, Mr. Chairman. Thank you very much.

Senator PRYOR. Thank you, Senator Mitchell.

Now, just so we can get our line of demarcation correct, General Gast is in charge basically of FMS, Foreign Military Sales—that's Government-to-Government. Mr. Robinson is in charge of commercial sales, and it is in these sales where agents are most active.

Now, that moves me into the area of agents. I would like to talk about agents. One, under foreign military sales—I think Senator Mitchell would find this interesting—I understand that there's a $50,000 agent fee cap, and that fee has to be recorded.

By the way, I would like to compliment you. It is not often I compliment the Pentagon. I would like to compliment you on your management manual that you have. I would also like to compliment the Department of Commerce on its management manual, and I would also like to note the absence in the State Department of the Office of Munitions Controls that handles some 49,000 license applications a year, that there is no manual, no written procedure. It seems to be by the seat of your pants. I think that is a proper description.

I would like to talk about agents in commercial arms transactions. Correct me if I'm wrong, that there is no limit on the fee that an agent can make; is this right, Mr. Robinson?

Mr. ROBINSON. Yes, sir.

Senator PRYOR. There is no cap whatsoever.

What is the largest agent's fee that you know of?

Mr. ROBINSON. I would have to go back to the years when—it may have been an FMS case, back before we had a cap on agents' fees.

Mr. BRYANT. We can get it for you.

Mr. ROBINSON. We would have to search back through our records, sir. We report them to Congress as required.

Senator PRYOR. Now, I'm glad you mentioned this.

When you report agents' fees to Congress, as you are required by law I think any fee of over $250,000 you must report; is this correct? I'm corrected. It's $100,000.

Mr. BRYANT. It's $100,000.

Senator PRYOR. And in 1986, you published this report of fees given to agents, and there are only 23 such reports of fees over $100,000 in 1986.

Now, my question is this. When we're talking about 46,000 to 50,000 license applications for arms traders, we're only talking about 23 occasions, two, three, when fees of over $100,000 were reported.

Do you believe this to be correct?

Mr. BRYANT. Is that for all of 1986, sir, or for one quarter?

Senator PRYOR. We understand it is for the entire year of 1986, which to me is preposterous.

For example—I think under the law I cannot disclose names, but here is one fee where an export of thermal tank sight systems was sold to "x" country where a fee of $324,000 was earned by the agent. And then we go further into this report and find only 23 such reporting of fees.

Now, are they all reporting their fees?

Mr. BRYANT. If they're not, sir, they're in violation of law.

Senator PRYOR. If they're in violation of the law, how do you know they're in violation of the law?

Mr. BRYANT. Only when we get some information to that effect.

Senator PRYOR. But you don't have information in your computer that would help you to identify and act on violations of this provision of law.

Mr. BRYANT. Now, wait a minute, sir. If we get information that they are paid a fee and not reporting it, then we would refer the matter to the U.S. Customs Service for investigation, for criminal investigation.

Senator PRYOR. Let's discuss a case in 1983. That year eighty-seven Hughes helicopters were sold to a West German by the Semmler brothers, who owned Associated Industries. These helicopters were resold to North Korea. The Semmler brothers and the Germans were put on a denial list at the Commerce Department in February 1985. The brothers were indicted 1 month ago.

Question: Was Associated Industries, the Semmler brothers, or the German prohibited from getting licenses for commercial arms exports when they were put the denial list? [1]

Mr. BRYANT. No, sir.

Senator PRYOR. They were not denied? They got a license otherwise?

Mr. BRYANT. I don't know whether they got a license. They were not denied——

Senator PRYOR. They might still have a license, in other words, to operate?

Mr. BRYANT. No, sir. What I'm saying to you is, if they had made application to us for a license—You must remember, each transaction must be licensed. They do not have a license to be an arms dealer. For each transaction, they must come in to us and request a license for that particular transaction. If they made application to us, the application would not necessarily be denied because they have been debarred by the Department of Commerce.

Senator PRYOR. Even though they have been indicted, even though they illegally sold helicopters to North Korea, they would not be debarred automatically; is that correct? Is that what you're saying? [1]

Mr. BRYANT. That is correct. That is what I'm saying, sir.

[1] See Question 4 and response on p. 56.

Senator PRYOR. Do you recommend that a change in the law should take place, or are you comfortable with existing law? [1]

Mr. BRYANT. I'm comfortable with it, sir. These men have been found guilty of nothing yet. When they are found guilty, then some action may be taken, but they have only been charged. They have not been found guilty of any violation of U.S. law.

Mr. ROBINSON. Senator, we are in—not daily—but weekly and monthly contact with our lawyers——

Senator PRYOR. Pardon?

Mr. ROBINSON. We are daily, weekly, monthly, almost every moment of our lives sometimes, in contact with our lawyers, and I would like to furnish an answer to this particular proposition in conjunction with the lawyers for the record.

Senator PRYOR. Well, what bothers me is, once again, we're seeing a procedure that has broken down and nothing seems to be being done about it. Really, I am deeply troubled and concerned about that.

Now, let's talk about this just a moment. If you go back to your office this afternoon and there was an application on your desk, Mr. Robinson, from one Oliver North in McLean, VA, to become an arms merchant overseas, what would you do with that application?

Mr. ROBINSON. Well, the law of the land, the Arms Export Control Act, says that everyone in the business, manufacturing and exporting, must register with us. Registration requires the filling out of a form, a fairly simple form, the payment of $250, or $1,000 for 5 years, then there is no basis for us turning down a registration for anyone.

Senator PRYOR. So you don't turn down applications, do you?

Mr. ROBINSON. That's the registration.

Senator PRYOR. Well, you don't turn down registrations?

Mr. ROBINSON. There's no basis for turning down a registration. There is no legal basis. We cannot operate arbitrarily or capriciously on these registrations.

Senator PRYOR. Well, then, what about an ultimate license? Would you make a recommendation on Mr. North being a licensed arms dealer?

Mr. ROBINSON. Well, let's say "Mr. Smith".

Senator PRYOR. Mr. Smith?

Mr. ROBINSON. In lieu of Mr. North.

Senator PRYOR. Well, let's take another one, then. Let's say Mr. Eric Von Marbod. He was former head of the DSAA, as I recall, General, and may have gotten into some difficulty, regarding an exclusive contract for shipping supplies to Egypt, as I recall. Does he have a license today?

Mr. ROBINSON. He's not registered with us.

You like to use the word "license". He's not registered with us. Nobody has a license. You register and then you apply for a license. If Mr. Von Marbod wanted to register—and he has not registered—if he wanted to register, we would permit him to register and take his $250. If he came in to ship a rifle to his aunt who lived in a kibbutz in Israel, we would certainly let him do it. If he

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[1] See Question 4 and response on p. 56.

came in with a license to supply spare parts to Egypt, we would probably take a harder look.

Senator MITCHELL. Mr. Chairman, may I ask a question?

Senator PRYOR. Certainly.

Senator MITCHELL. Do you believe that the law should be amended to establish certain minimum criteria for the registration of persons or entities as manufacturers or exporters of arms?

Mr. ROBINSON. I anticipated that question, but unfortunately, even though I did anticipate it, I would have to take it and furnish the answer for the record because that position and decision would have to be made by somebody higher than me. It involves an awful lot—I mean, who would do the checking on the background. But I will provide it and appreciate the question.[1]

Senator MITCHELL. Well, don't you have a personal opinion? Can you tell us what your personal opinion is?

Mr. ROBINSON. Well, it really doesn't bother me in being able to register. What we're getting into is a philosophical thing here. Industry, for example, feels that there is a presumption of exportability when they make an application to export. I feel it's a case-by-case merit and each one is new and there is no presumption of exportability. However, we can't turn these licenses down just because we don't like the cut of the applicant. And that is proper. We have to treat everyone evenhanded.

To answer your question, yes, there probably should be some improvement.

Senator MITCHELL. I think, if I may indulge on the Senator's time——

Senator PRYOR. Certainly. Go right ahead.

Senator MITCHELL. I think Senator Pryor has made the point that under current law, which you very appropriately have said you are limited or constrained by, any person or entity can register as an exporter of arms from the United States. There is no legal basis for declining a registrant.

My question is, should there be? Should any person in the United States, no matter what his or her background, no matter what his or her record, no matter what his or her intent, be permitted to register as an exporter of arms?

And if I may ask a further question, in order to obtain a license for a specific transaction, does one have to be a prior be a registrant?

Mr. ROBINSON. Well, I think a bad law is worse than no law. What concerns me is, if a law was passed placing limitations on registration, requirements that had to be met, my only concern would be that we had the wherewithal to make sure that it was enforced and policed properly. I certainly have no way to look at the backgrounds of 4,000 people.

Senator MITCHELL. Well, let me, as we so often do, make the point by exaggeration. Suppose a person is convicted of treason against the United States. Under the law now, that person could apply to file a registration with your department and you have no

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[1] See response to Question 5 on p. 57.

basis to turn them down as an exporter of arms; isn't that what you just said?

Mr. ROBINSON. That's what I said. And I would say further that, if I did turn him down and he took me to court, I would get beat.

Senator MITCHELL. So do you have a personal opinion on whether or not a person that has committed treason against the United States should be permitted to export American-made arms?

Mr. ROBINSON. Well, I think I will just stick with my statement, that there ought to be some tightening up. but tightening up only if we have the assets to enforce it.

Senator PRYOR. If you have what to enforce it?

Mr. ROBINSON. Well, if we turn around and say that nobody with a criminal record can register, well, old William B. Robinson in the Department of State has got no way to look at 4,000 people to see if they have a criminal record.

All I'm saying is, if you do put the tightening up in, just make sure that somebody is pinned with the responsibility of checking them out.

Senator MITCHELL. Mr. Chairman, if I could——

Senator PRYOR. Go right ahead, George.

Senator MITCHELL. As I understand, the law requires registration for all manufacturers and exporters. Therefore, it must follow logically that if a person applies for a license to export arms in a specific transaction, that person must have previously registered or must register contemporaneously with the license application; is that not correct?

Mr. ROBINSON. That's generally correct. The way it breaks down—just one technical point. Anyone can register. Only U.S. citizens or registered aliens can get licensed.

Senator MITCHELL. I guess my question is, what is the first thing you do when you get a license application? Check to determine that the person is registered as an exporter?

Mr. ROBINSON. There's a place on the form for his registration number. If it's not there, then that application is picked off.

Senator MITCHELL. So you don't have to be a licensee to be a registrant, but you have to be a registrant to be a licensee, and there is no legal basis for declining any application to register; is that correct?

Mr. BRYANT. No, sir, there is no basis for telling that person they cannot register. We may question them and say are you sure you're in the business of manufacturing, or are you sure you're in the business of exporting. If they come back and assure us that they're in the business of manufacturing or exporting U.S. munitions list articles, we will register them.

Senator MITCHELL. And as Senator Pryor noted and developed with the questioning, there is no single, publicly-available written standard by which one can determine whether or not a license application will or will not be approved? I believe Mr. Smaldone testified there are certain executive instructions, the President's policy statements, many of which are classified, which serve as the basis for determination.

Was I correct in paraphrasing your testimony?

Mr. SMALDONE. Yes, sir. But with respect to those areas wherein a clear policy has been established with regard to a particular kind

of equipment, we generally do publish those policies. For instance, we regulate exports of Tempest equipment, Tempest being designed to suppress electronic emanations from typewriters, computers, and things like that, to prevent their being covertly monitored.

Now, we have a very explicit policy on the export of Tempest equipment, which is published. We have a newsletter that we distribute on occasion and the policy is stated in that newsletter.

Senator MITCHELL. So your testimony is, taken in its entirety, is that in some specific equipment areas there are published criteria by which an applicant can determine in advance the likelihood of acceptance or rejection; in other areas there is not?

Mr. SMALDONE. Yes, sir. Those are the two extremes of the circumstances, but I would say the vast majority of the business is somewhere in the middle. Most of the exporters have been in the business for a long time, they're not neophytes, they read the papers, and they deal with us. They telephone us oftentimes to seek an informal advisory opinion as to whether or not a license would be granted. We have a formal procedure for requesting a written advisory opinion. By availing themselves of these various means, the range of uncertainty is considerably reduced.

Senator MITCHELL. Would the Senator indulge me for just one more question?

Senator PRYOR. Certainly.

Senator MITCHELL. We have already established that there is no legal basis for denying an applicant for registration. Any person may register. Is there any legal standard regarding the applicant, as opposed to the subject matter of the license application, which would authorize you to reject an application for a license, such as a criminal record, someone who has committed treason, anything like that? Do you have a legal basis and, if you do, is it published anywhere, as to which persons may be rejected in applying for a license to export arms from the United States as opposed to the subject matter of the license application?

Mr. BRYANT. I can't think of one, sir, other than the fact that the person has been convicted of violating our statute, section 38 of the Arms Export Control Act.

Senator MITCHELL. That debars them?

Mr. BRYANT. That would be the basis for denying them an application.

Senator MITCHELL. But again, to state a hypothetical extreme: a person who in his lifetime has committed murder, perjury, and treason; that constitutes no basis for denying an application to export arms, to sell American-made arms to someplace outside the States?

Mr. BRYANT. Not insofar as I'm aware, sir.

Senator MITCHELL. Do any of you have an opinion as to whether or not that aspect of the law should be changed?

Mr. SMALDONE. Sir, if it were changed only in that respect, I'm not sure it would have any practical effect. Registration by itself is an innocuous process. It is an entitlement for nothing.

Senator MITCHELL. I'm talking about the licenses as well. It is a matter of custom and practice in the United States that persons who have been convicted of crimes are deprived of certain rights

and freedoms which other citizens have. That's a regular matter of practice in the United States.

The question really is, should that practice be expanded to the sale outside the United States of arms made in the United States? Should there be some mechanism for including as a factor, in evaluating applications for licenses to sell arms, the character of the applicant, as opposed to exclusively the subject matter of the license application?

Mr. SMALDONE. Sir, that's a heavy legal subject and I think the best we could do would be to furnish something for the record.[1]

General GAST. Senator, may I make a comment—and what I'm going to talk about has nothing to do with the OMC.

If you have had an opportunity to look at my testimony, which I ask to be put in the record, we in DSAA do finance commercial sales from congressionally appropriated dollars for military assistance. We do that based on several criteria, but one of them is the integrity of the company, to the extent that it has not been debarred. If it's on the debarment list, either by our own Defense Department or a suspension by our Department of Defense list or Commerce, we, of course, will not agree to finance the contract.

But we further check into the bona fides of the companies and their ability to do business because U.S. tax dollars are involved, appropriated dollars. That is, we will do a survey on the company to be sure that they, in fact, are making what they said they are going to make and weren't getting it from a foreign source, that they have good business practices, quality control and so forth. It is not to the extent that we do it to the foreign military sales system, but that procedure does, I think, when U.S. appropriated dollars are involved, offer more security than otherwise it had until two or three or four years ago.

We are asking for legal authority in the AECA this year to not give a contract to a company who has been convicted or has an officer in it that has been convicted because he moved from one, but we need that legal authority. I think we will get it. I don't think there will be any problem with the concern of the Congress. Because we stand rather naked sometimes and find ourselves being threatened with court action, as one might imagine.

Senator MITCHELL. Well, if I could just make the further point. As I said, it is commonplace in the United States that an applicant for employment be required to complete a form, and almost invariably that form asks whether the person has previously been convicted of a crime. You're all Federal employees and you're aware that any applicant for Federal employment must answer that question. It is a factor to be considered.

I guess the question here is—you're right, it is a legal question. It's a broad, philosophical question, and a policy question for us. Are we, as a nation, so interested in encouraging the sale of arms throughout the world that we resolutely avoid even inquiring as to whether or not the person has any criminal record whatsoever?

Let me make a rhetorical question. It is really more relevant than the exaggerated one of a person committing treason.

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[1] See response to Question 6 on p. 57.

In recent years we have seen numerous examples of large defense contractors being convicted of crimes against the Government, for which they are punished. As I understand, from what we have been told here today, a company could, on the very day that it is convicted of a major crime against the United States, and have been punished either in the form of fines or prison sentences for its executives, apply for and receive a license to sell arms overseas because there is no legal basis for taking into account the former fact in the latter decision. That's correct, is it not?

Mr. ROBINSON. That's correct, and probably the next day they would get a new Defense Department contract, too.

Senator MITCHELL. Well, I think the question that Senator Pryor and I and the other Senators will have to answer is whether or not there should be some standards.

Is there a policy; if not consciously stated, then at least an unwitting policy, that says, unlike most other areas of activity within our society, arms exportation is one in which we are so concerned about imposing any restraint that we won't even ask whether the person has a criminal record prior to engaging in the arms trade even though we do that regularly in virtually every other area of social activity in our society?

Mr. ROBINSON. In talking about me and my practices, my answer to that would be, if I asked the FBI to look into a registrant and they came back and said he had a criminal record, and I attempted to prevent him from having licenses or to register because of that record, he could throw a legal suit at me and that would be the end for me.

Senator MITCHELL. But there's no question about that. You have correctly said there is no legal basis for that.

Now, the purpose of this hearing is, in fact, whether there should be any changes in the law. I think the testimony raises a serious question as to whether or not the law should be changed in that regard, or should we continue the current practice of imposing no restraint whatsoever regardless of the character, record, or intent, motive, of the persons involved.

Mr. ROBINSON. I hope you do look at it.

Senator PRYOR. Senator Mitchell, that was an excellent series of questions, and it leads me to one that——

Senator MITCHELL. I apologize for——

Senator PRYOR. No, no, absolutely. It leads me to one that relates to a firm in Fredericksburg, VA. The Nordac firm, in 1979, defaulted on a DOD contract and had a bad track record with DOD. In 1983, DSAA selected Nordac to produce and deliver $4.8 million in rifle ammunition to El Salvador.

The company went out and bought the ammunition from Yugoslavia. That violated the legal requirement that FMS sales—government sales—must be domestically produced. It falsified documents, paid agents' fees—I understand about $500,000, which violates the $50,000 cap on FMS sales, and on and on.

The question is, how in the world did this particular company out in Virginia get this contract. They had never produced a bullet in their life, but yet they got the contract, $4.8 million in rifle ammunition for El Salvador. How does this occur?

By the way, I don't think this is OMC's fault. This is a Government-to-Government contract.

General GAST. Sir, it is not a Government-to-Government contract.

Senator PRYOR. It is not?

General GAST. No, sir, it is not. It was not. It was a commercial contract.

Senator PRYOR. So it is OMC's fault, OK.

General GAST. No, I am not saying it is OMC's fault, nor am I saying that it is going to happen again. I hope not.

But, Mr. Chairman, in the 1980's there may be one time period when we switched from the old MAP program to more credits, and the Congress lifted the ceiling on commercial sales. There began to become a trend for more commercial sales as shown on that chart, which reflects the congressional action, largely, and lifting limitations.

Countries have long dealt with our companies in the United States. Nordac was one of those. The Government of El Salvador, in deciding where it would buy ammunition, made a contract with Nordac. That contract came to us in 1983—late 1982, early 1983—on my watch, for financing.

We really did not have strong guidelines in that period. I acknowledge that. There was a period when all of us were becoming concerned about corruption and fraud not only in arms transfers but in a lot of things.

We had more or less taken the view that since we were not a party to the contract—we are still not, on these commercial contracts—then our principal role should be as a t of a banker, to pay the bills on invoices when given to us by the commercial company.

We began to pick up that this ammunition that was delivered was faulty from our people on the ground, and from the El Salvadorans, who complained. The more we looked into it, the more we saw that we were in desperate need to come up with some guidelines, and to publish those guidelines, and to work with our countries.

This was, of course, turned over by us to Justice, and they investigated and prosecuted it, and I think you know the outcome of that.

We have, as I indicated earlier, established a lot of measures which we believe, deter, to a great extent, fraud, misuse of funds, and allows more effective use of those funds to assure that there's a competitive aspect to the pricing and selection of commercial contracts. The best we can so is to slow down the payment schedules and be sure there's not any foreign content in it.

The three or four cases that we have—and Nordac was not the only one—Springfield Armory, and the others—have been in process for a couple of months. Since we strengthened and published guidelines in 1984, we strengthened them again in 1985, and I just signed out some new ones today, which will strengthen them even more.

Senator PRYOR. General, is there any indication that this ammunition did not stay in El Salvador, but went to the contras in Nicaragua?

General GAST. I have no indication that it is not in El Salvador. My information is that it is in El Salvador. It's in a warehouse.

Senator PRYOR. Part of it's lost, though, isn't it?

General GAST. No, it's not lost, no, sir. Not according to our people on the ground, who have talked with the El Salvadoran armed forces people about it.

Senator PRYOR. Is there an investigation ongoing about it?

General GAST. I have no basis to investigate whether it's gone or not. I happen to know the Chief of Staff of their armed forces professionally, and their Minister of Defense. We deal with them regularly to—and I must say, by the way, that the leadership in the military down there have asked us to be very careful to not give the appearance that there may be fraud or misuse of funds down there.

Senator PRYOR. Whose military where?

General GAST. El Salvadoran military, the leadership.

Senator PRYOR. They've asked you not to mention fraud.

General GAST. No, sir, that's not the whole point, at all.

Senator PRYOR. Excuse me.

General GAST. They have said that whenever—the first thing is, now, almost all of their procurement goes through our foreign military sales system, because there is no credit left, but there is some credit left—there's a little bit.

They have come to us asking for a certain manufacturer to produce this. We have said, we want you to go back and be competitive, and they've agreed to be competitive, because we were concerned that the image would prevail that there was corruption there.

It was important to us, not only for the El Salvadoran military, their behavior and what they're trying to do to help that country, but also our relationships with the Congress that the process absolutely had to be right.

Senator PRYOR. So basically, you're saying that there are major problems with Nordac, right?

General GAST. Yes, sir.

Senator PRYOR. Now, let's do our check——

General GAST. It was not taxpayers' money, either, by the way, as reported. They were government loans that were financed——

Senator PRYOR. That's taxpayers' money.

General GAST [continuing]. By the taxpayer, but the El Salvadorans have to pay them back.

Senator PRYOR. All right, let's do our check and balance system here just a moment. You say DSAA says that this is a real problem company, Nordac.

Now, a question to OMC and the State Department. Does Nordac still have a license to sell arms overseas?

Mr. BRYANT. No, sir.

Senator PRYOR. What about registration?

Mr. BRYANT. I would have to look it up, sir, and give you a response. If they have paid their registration, their registration is good for however long that fee was for. If their registration is through, let us say, June of 1987, they are registered through June of 1987.

Senator PRYOR. Even though they are a problem, or deserve some scrutiny, you would not look at them in any different way, is this correct?

Mr. BRYANT. Oh, certainly we would look at them in a different way if they made application to us for a license.

Senator PRYOR. Do they have a license?

Mr. BRYANT. Senator, they don't have a license now. If you were registered with us, and you never apply for a license, you're lying——

Senator PRYOR. I asked the question, do they have a license?

Mr. BRYANT. I am answering your question. As far as Nordac is concerned, they are inactive. They do not now have a license to export U.S. Munitions List articles to any specific country.

Senator PRYOR. The enforcement—I'd like to talk just a moment about enforcement in OMC. How many people do you have in the enforcement division of OMC?

Mr. BRYANT. Three.

Senator PRYOR. Three people. Would you describe the training of these three people?

Mr. BRYANT. One is myself and two are two paralegals that were——

Senator PRYOR. Yourself and two paralegals.

Mr. BRYANT. Yes, sir.

Senator PRYOR. That is the enforcement division of the Office of Munitions Control. You have a Herculean job. I don't know how you tend to all the things that you do. Yes, sir, Mr. Robinson.

Mr. ROBINSON. Senator, I am told that the proper term is the Compliance Division among our enforcement people; our investigators are Customs.

Senator PRYOR. Are what?

Mr. ROBINSON. The Customs.

Senator PRYOR. Yes, we are going to talk to the Customs people in just a moment. We are going to talk about some of the interaction between various agents, and we want to get to that as soon as we can.

Now, is it possible for three people to do all the things necessary for enforcement in OMC?

Mr. ROBINSON. No, sir, not all the things that are necessary. We allocate our resources, giving priority to those things that we consider to be most important, and that that is cooperating with the U.S. Customs Service in investigations, and coordinating with the Department of Justice in prosecutions.

Senator PRYOR. Does your enforcement staff compile any lists of U.S. suppliers or shippers or foreign purchasers who are under investigation by Customs, Commerce, or DOD, or who might deserve special scrutiny? Do you compile such a list?

Mr. ROBINSON. We have files with regard to persons who are under investigation for violations or alleged violations of our statute; but not the Commerce and whatever DOD may have under way.

Senator PRYOR. You don't have a list like Commerce, for example?

Mr. ROBINSON. You're talking about the——

Senator PRYOR. Well, here the Commerce Department for example has Denial Orders.

Mr. ROBINSON. No, sir, we do not have such a list.

Senator PRYOR. And, they have people and companies in this particular book—by the way, you can order this and you can use your Master Charge or VISA—it says on the back—to get a copy of this, if you like.

But you don't have anything like that within the OMC, is this correct?

Mr. ROBINSON. We routinely receive that list, sir.

Senator PRYOR. I didn't ask if—I just asked you if you printed one yourself.

Mr. ROBINSON. No, sir, we do not.

Senator PRYOR. Do you consider it a violation of the Privacy Act to do so?

Mr. ROBINSON. [Pause.]

Senator PRYOR. I think you're operating by the seat of your pants, and I really say that in all due respect. I've heard you say, well, we're going to call the FBI, we're going to call DOD, we're going to do all of these things when and if we see a problem.

Handling 50,000 license requests down there, with all of these things that you're doing with a mammoth supply of paper work, mountains of processing work, I don't know how you have time to do anything. I truly don't know how you can do this job.

I'm not necessarily advocating you get a larger staff. I'm saying the procedures to help you are not these—there's something——

Mr. ROBINSON. Well, that's a matter of opinion, Senator. That's a matter of opinion. We are asking for five more people. We have asked for five more people, including a lawyer, regular attorney for our compliance division.

Senator PRYOR. In 1986, your office approved $169,000 of sales to Iraq. Do you recall what was sold at that time to Iraq, in 1986, a commercial sale?

Mr. SMALDONE. Our policy with respect to Iraq is generally a policy of denial. The few items which were reported there consist of items which were licensed after thorough interagency review, exclusively for the personal security of the Head of State.

Senator PRYOR. The personal security of what?

Mr. SMALDONE. The Head of State, the President of Iraq.

Senator PRYOR. And that was a commercial sale, is this correct?

Mr. SMALDONE. Yes, sir.

Senator PRYOR. Now, there were also sales of handguns to the Civil Guard in the Ministry of the Interior of Peru. I understand that this same Civil Guard is mentioned in the State Department's annual Human Rights Report to have participated in numerous human rights abuses and violations. FMS sales and grants-in-aid are prohibited for human rights abusers and for police forces, but it looks like $8.3 million in handguns were approved by OMC under a commercial sale to the Civil Guard of the Ministry of the Interior of Peru.

Do you recall this transaction?

Mr. SMALDONE. Not specifically, sir.

Senator PRYOR. Is it true that there is less paperwork with a commercial transaction than with a foreign military sale?

Mr. ROBINSON. Just a second, if I may. I recall the Peru transaction, and it was checked out properly and appropriately through the Human Rights and other people. They were reequipping down there to change their handguns, but I would like to furnish that for the record. That is my recollection.

Senator PRYOR. You did not find that to be a circumvention of the human rights issue?

Mr. ROBINSON. I do not circumvent the human rights issue.

Senator PRYOR. Why is it that we still find that Iran, Iraq, Nicaragua, Cambodia are still listed as countries eligible to receive commercial or FMS sales from the United States.

Mr. ROBINSON. Have to run through that list again, but I do not think that we have licensed anything to any of them.

Senator PRYOR. I did not say you had licensed anything to Iran, Iraq, Nicaragua, Cambodia, or the Republic of South Viet Nam, which no longer exists. I say they are still listed as eligible for sales.

Mr. ROBINSON. You say they're still eligible for FMS?

Senator PRYOR. And commercial sales.

Mr. ROBINSON. I don't know how you make someone eligible for commercial sales. FMS is a Presidential determination.

Senator PRYOR. What about waivers? We were talking about Presidential determination. How many waivers are we granting each year at OMC?

Mr. ROBINSON. None, to my knowledge. Ever.

Senator PRYOR. Sir, under the law the OMC can waive any of the prohibitions in the ITAR without review from any other entity in the executive branch or the Congress.

Mr. ROBINSON. Senator, I can assure you I have never done it.

Senator PRYOR. You have never granted a waiver?

Mr. ROBINSON. Not in my memory.

Senator PRYOR. I think I could cite you one or two waivers but I will not do that at this time.

Mr. ROBINSON. Are you talking about importation?

Senator PRYOR. Pardon?

Mr. ROBINSON. Are you talking about importation?

Senator PRYOR. No, I am talking about exports. To Romania—does that ring a bell?

Mr. ROBINSON. I do not call that a waiver. That is a policy. We exported because the Department of State directed us to. I certainly did not make the waiver.

Senator PRYOR. Do you feel—again, I am asking for a personal opinion——

Mr. ROBINSON. Look, as far as I am concerned, that waiver authority is for me to do something that I don't ordinarily have the authority to do through the regular channels.

Senator PRYOR. I see.

Mr. ROBINSON. I just said I don't exercise that.

Senator PRYOR. Mr. Robinson, once again, as Senator Mitchell asked you on several occasions awhile ago, do you see any possible or needed change in legislation right now that governs your operation. I'm not talking about additional employees. Do you see any need for change in the basic statute?

Do you have too much authority or too little authority?

Mr. ROBINSON. My authority is adequate.

Senator PRYOR. Is adequate?

Mr. ROBINSON. Yes, sir.

Senator PRYOR. You wouldn't like a little more enforcement power?

Mr. ROBINSON. You're talking about a basis for authority. I've been trying to talk to you about the need for people to exercise the authority in the regulations under control. As far as I can see, you have kept dodging away from that, but I don't need any more authority, I need more people to help me exercise it.

Senator PRYOR. You would have to go forward in another channel, because this Committee has no jurisdiction over your annual budget. That would have to, of course, go before the Foreign Relations Committee.

Mr. ROBINSON. I probably wouldn't——

Senator PRYOR. And ultimately the Appropriations Committee.

By the way, General Gast, you never did actually get an opportunity to make your opening statement.

General GAST. That is all right. Thank you very much.

Senator PRYOR. I think you have expressed yourself very well, and we would certainly like to put your statement in the record——

General GAST. By all means. I would like very much for you to. Please, put it in the record, because I believe it fairly well documents how we do our work—put a lot of work into it.

I think in response to the question, do we need any more—if I may comment on your question, do we need more authority. I have already mentioned to you a legislative initiative which is not yet before the Congress but will be coming before the Foreign Affairs Committees on the authority to deny commercial contract financing for those people that have been convicted or barred or members thereof. I am sure that it will receive adequate support over here on the Hill.

There has been talk of changing one part of the law that I do not think would be particularly helpful, and that is to make military assistance program funds, or grant-aid funds eligible for commercial financing. I would not support that.

Senator PRYOR. I appreciate that comment.

This hearing, actually—we have enough information and enough questions, I think to make about three hearings out of it.

One whole area that I wanted to go into with the witnesses today is who is paying more for weapons, U.S. taxpayers or foreigners we're selling weapons to. That's a whole other ball game.

General GAST. May I just have a second on that one?

Senator PRYOR. Yes.

General GAST. I think that is an important one because I believe it was in your opening statement. You were wondering whether we were providing indirect subsidies or not.

First thing is, it is against the law to do that. The AECA clearly points out that there will be no cost to the U.S. taxpayer, other than those dollars that are appropriated through the normal process for financing. So we are very careful to ensure that that does not occur. I am not supposed to make or lose a nickel in this business. We work to not do that.

There are benefits that come to the U.S. Government from the sales, but they are spinoff benefits like if we buy F-16's for another country, the price of our F-16's will go down because there's more in the competition—being negotiated, as contract negotiations.

But we do, through the FMS system, we negotiate with the contractors as if we were buying for ourselves.

Senator PRYOR. General, thank you.

I think for the time being, in fact, for the remainder of this hearing, we will excuse our present panel of witnesses. We want to thank all of you for coming.

We're trying to learn a little more about this. We are going to ask the Customs Officials to come forward at this time and talk a little about the enforcement, and about how they are cooperating with the various agencies, and sharing information. I think that's very critical.

I want to thank you, General, Mr. Bryant, and Mr. Robinson, Mr. Smaldone and thank all of you for being here today.

We have two witnesses from the Treasury Department, the U.S. Customs Service. One is Samuel H. Banks, the Assistant Commissioner, Office of Inspection and Control, and Leonard S. Walton, Director of Strategic Investigations Division. That is the Office of Enforcement.

Mr. Banks, do you have a statement, or Mr. Walton, do you?

Mr. BANKS. Mr. Chairman, we have a statement prepared. We can read it or introduce it in the record for interests of time.

Senator PRYOR. Fine, very good. I'm sorry this hearing has gone on so long. We still have left a lot of areas uncovered that we want to cover. If you sit and listen, you see that the issue is pretty vast, and we're just beginning now to look at it.

Mr. Banks, do you have an opening statement?

TESTIMONY OF STEVE WALTON, DIRECTOR, OFFICE OF STRATEGIC INVESTIGATIONS, ENFORCEMENT DIVISION, U.S. CUSTOMS SERVICE, AND SAM BANKS, ASSISTANT COMMISSIONER, INSPECTION AND CONTROL DIVISION, U.S. CUSTOMS SERVICE

Mr. WALTON. Mr. Chairman, we have one opening statement [1] that we'll submit to the record, if that satisfies you.

Senator PRYOR. Fine. We deeply appreciate that.

Now, you have been referred to this morning as the enforcement area of all of this international weapons traffic. Is that correct?

Mr. WALTON. Yes, sir. The U.S. Customs Service is the enforcement, criminal investigative, prosecutorial authority under the Arms Export Control Act.

Senator PRYOR. Now, one of the previous witnesses, Mr. Bryant, from OMC, stated in an answer to a question posed by Senator Mitchell—Mr. Bryant—said there's not a substantial illegal international trade in U.S. arms. I wonder if you would like to agree or disagree with that statement.

Mr. WALTON. Mr. Chairman, it might very well be a subjective judgment on Mr. Bryant's part and my part. I would characterize

[1] See p. 83.

the international trafficking in U.S.-origin munitions and instruments of war as being pretty substantial.

Senator PRYOR. Pretty substantial.

Mr. WALTON. That is my judgment that is based on my experience in this particular calling.

Senator PRYOR. What is the Operation Exodus that the Customs Service inaugurated in 1981?

Mr. WALTON. Operation Exodus is our name for the entire range of responsibilities for the U.S. Customs Service in the entire export control area, of which the Arms Export Control Act is one segment. Other segments include the Export Administration Act as amended in 1985. We also are the enforcement mechanism for the Treasury Department for foreign assets control and other provisions.

Operation Exodus is, in effect, our enforcement and compliance mechanism, aimed at fulfilling our responsibilities in the Customs Service to ensure that U.S. export laws are adhered to, and that enforcement efforts are conducted where violations are suspected or known.

Senator PRYOR. Mr. Walton, what about arms transfers to other countries? In the list of priorities of the Customs Department agencies, where is arms in that list?

Mr. WALTON. Let me answer your question this way, Mr. Chairman. The export control area—and we refer to it not only in the sense of arms control; we also talk about technology transfer, which is a more encompassing term in our definition—is a National Security jurisdiction. It is the only one the Customs Service has, and therefore is of the highest priority.

As you know, I am sure, Customs has responsibilities in other areas including drug smuggling and that sort of thing, but the export control area is at the highest definition in terms of U.S. Customs enforcement responsibilities.

Senator PRYOR. How many seizures have been made by Customs inspectors for each of the past, let's say three or four, fiscal years for violations of munitions export regulations?

Mr. WALTON. Since fiscal year 1982—I can give it you by year or I can give you a total——

Senator PRYOR. All right.

Mr. WALTON [continuing]. For 1982, there were 79 seizures—again, related to the Arms Export Control Act. That number, in fiscal year 1983, went to 314; in 1984, 274; in 1985, 137; and in fiscal year 1986, 397, for a total of 1,201 seizures for what we call OMC violations valued at approximately $95 million.

Senator PRYOR. Why so many in 1986 fiscal year—397? That was your top year. Why was that? Is that because we're shipping more arms?

Mr. WALTON. Mr. Chairman, that may have a bearing on it. We also found that there were more technical-type violations.

When Operation Exodus started in 1981 and the U.S. Customs Service, among other agencies, started gearing up their efforts to exercise the new responsibilities they were given, or affirmation of the old ones, a lot of the figures you'll see reflected—let's say, for fiscal 1983, perhaps even 1984—was actually a process we called weeding out the fudgers.

As public awareness was being heightened in the United States in the whole tech transfer area, we found that we were uncovering a lot of technical-type violations, technical-type seizures, in some cases, quite frankly, Senator, we made some seizures that in this day and age we would not make, because everybody was getting up to speed in the act.

So we think that now, because our methodology is a little bit different in the seizure process, that would explain why 1985 appears to be a dropback, and now we are jumping back up again. Also, I should add that we are paying more attention to transit controls now, and as our enforcement efforts become more comprehensive, we are trying to make sure we are uncovering all possible violations in arms exportation.

Senator PRYOR. Are most of these violations in the commercial sales field rather than the Government-to-Government?

Mr. WALTON. Yes, sir.

Senator PRYOR. How do you have any way of knowing in Customs how many rifles are in a box, or how many TOW missiles are in a plane? How do you have any idea?

Mr. WALTON. We have numerous means which allow us sometimes to know in advance when a violation could occur. Also, the inspection and control process, which Mr. Banks can address, sometimes actually does uncover situations such as you are posing.

As an example, if we have a shipment going out of the United States, and an inspector examines it, and a license is alleged or purported to be in effect, there is a mechanism—we can't do it all the time—but there is a mechanism to count the number of rifles in that box.

There is also a mechanism, through th Exodus Command Center, which is located in my division, to verify that license, verify the circumstances surrounding the description of the sale to ensure that all is correct, before that shipment will be allowed out.

Senator PRYOR. How long have you been in this particular role?

Mr. WALTON. I have been in this particular position for 10 months, sir.

Senator PRYOR. Are you encouraged about the outlook, or discouraged?

Mr. WALTON. I am encouraged at the present time, sir.

Senator PRYOR. You are encouraged, and why is that, because the number of seizures are going up? Are your ways of catching offenders being refined?

Mr. WALTON. I think our strategy. We are in the process—let me express it this way. This jurisdiction, the responsibility for the Customs Service is not only one that we exercise here in the United States.

I was stationed in Germany for 4 years prior to this position, and our approach, our strategy, our framework, is international. I am encouraged, for the most part—it is not necessarily a consistent optimism—but I am encouraged in the sense of the fragile and complex but increasingly significant international framework that we are creating, some elements of it very informal, to stop what we call the external diversions, which is a real big problem area in this whole jurisdiction.

I am encouraged by the strategy that we are beginning to apply at home, and the success which we seem to be able to obtain in getting prosecutions in our cases.

Senator PRYOR. I do not know how in the world we are ever going to do anything about the problem of retransfers of arms that we sell to A or B country, and they sell to C or D country. I don't know how we ever are going to get control of those.

Mr. WALTON. Well, we have, in the Customs Service, a strategy, and we have a very specific objective, with regard to that very issue. We have found that we have been more successful overseas if we can get our allies to act under their own laws. Most nations do have some sort of munitions laws, some sort of controls of some kind that are either comparable to or equivalent to our provisions, which is not true with EAA, by the way, and that is why I am more hopeful in the munitions area.

We have had more success in encouraging these nations to act consistent with their own laws than we have trying to establish a legal reciprocity to get them back in concert with us. For example, munitions offenses, as such, are not extraditable under any of our arrangements with any of the extradition treaties that we have, at least ones that I am familiar with, and that's most of them.

And we find mutual assistance agreements and treaties such as the United States might have with any number of different nations really seems to show up with a vacuum or a void, when it comes to this type of thing.

But when we get even neutral countries—not necessarily our allies, but even neutral countries—to act consistent with their own laws, again within the international framework in which we participate, I am greatly encouraged. A lot of that is based on my own experience in being stationed overseas.

Senator PRYOR. Mr. Banks, do you want to comment on any of that?

Mr. BANKS. I would like to comment on whether or not we are encouraged about the work we are doing. I think we are greatly encouraged. I think that the officers that we have in the field, actually doing the inspection process, and trying to weed out what we consider the bad shipments as opposed to the legitimate shipments—these people are becoming much more sophisticated in their process. Their information bases are building, and they are becoming much more proficient in their work.

Senator PRYOR. The State Department testified a few moments ago. It seems, if you ever talk to them about enforcement, they say, well, that's up to Customs. Now, do you feel like that's too much of a burden to put on you?

Mr. BANKS. No, sir. We enforce the laws for about 40 different agencies, about 400 different laws. We are used to that.

Senator PRYOR. Do you not think the State Department—if they would more carefully review licenses, you would have fewer articles to look out after out there. You would not have quite as many—wouldn't that be the case?

Mr. WALTON. I am not so sure, sir, that that would necessarily be the case. Many of the violations which we detect, investigate, and prosecute are cases, instances, violations, if you will, that result from a total absence of a license anyway. There are several differ-

ent basic schemes involved in the violations of which, I think, fewer, licenses or even the absence or a presence of a license is really no factor.

Misdescription of goods, out and out smuggling—we had a case in the last couple of years on weapons to the Irish Republican Army, out of the United States—a clearcut smuggling case, no license involved.

I am not sure, the absence or presence of license—I know licenses are important, even false ones, in the context of an evidence trail, when we are trying to establish a violation. In that sense, it is a tool which we do not have in a sheer smuggling case.

But I am looking at it from a completely different and somewhat narrower perspective. I am looking at it from the standpoint of making a violation. In that sense a license has some importance. But that is not the purpose for which it was intended.

Senator PRYOR. What sort of support do you get from your counterparts in Mexico or Canada, our open-border neighbors, in the customs areas there? What sort of support are we getting?

Mr. WALTON. In the investigative area, and where we have the appropriate framework to deal with them—that's important, in the sense of a mutual agreement or some sort of informal inderstanding that is accepted by both Governments, or legal reciprocity—no problem, sir.

In Mexico, we have not had a lot of what we call major arms diversion cases per se through Mexico. Quite frankly, we have not with Canada either, but guaging on what has happened and looking to the cooperation on most of the other areas, I would have to characterize that cooperation as pretty good.

Senator PRYOR. Mr. Walton, let's see. I have several questions that we may want to submit for the record a little later but we will not go into orally at this time.

One question. Last year the customs and the Inspector General of DOD conducted a review of diversions of surplus material from the Defense Department. I understand that this study outlines significant problems at the DOD, and I wonder if you might touch on those findings, if you would.

What is that, Operation Retread?

Mr. WALTON. We called it Operation Retread.

Senator PRYOR. That is an exotic name.

Mr. WALTON. It was a joint—I guess we would characterize it as an investigative study of the Defense Reutilization and Marketing Service. We did in effect really a worldwide examination looking to the problems having to do with defense material and the possible diversion of defense materials to proscribed destinations.

We have completed the investigative study. We have submitted a report to the Department of Defense on our findings, and I can go into that. I would like to point out, though that we did generate and initiate very specific investigative activity out of that study, which has now resulted in some violations being established. I believe we have had our first arrests and indictments in that case as a direct derivative of that study.

One of the things that we found in the course of that study, which went on for several months, was that the potential for diversion of critical military hardware exists to a much greater degree

in the Department of Defense supply system than in the property disposal system—that is, theft from depot stock. This was also my experience when I was stationed in Europe, when I used to hear horrendous figures from within the military on loss rates, like misplaced tanks, and things like that. The study pretty much reinforced that, that there is a probably much greater threat, by whatever means you want to define it, from that than the disposal process.

Also, definitional and classification differences between the DOD military Munitions List items and the OMC list items. They don't match, not exactly. It can create some confusion in definition and some misunderstanding with regard to what particular widget is being talked about.

DOD facilities that generate surplus property don't always identify the equipment turned into the Defense Reutilization and Marketing Offices with complete national stock numbers. That is, all of a sudden the accountability—the audit trail—falls off.

Commingling of usable merchandise with merchandise sold as scrap. I myself was involved in a matter in which material that had been disposed of the normal process—this happened to be fire control systems for the M60 tank—were in fact new in the crate, had never been used but had been surplused out as not usable by the military in Europe, for example.

We also found that the personnel in the Defense Reutilization and Marketing Service lacked the equipment and the training to properly demil, or demilitarize, material properly.

We submitted this in a study—the Commissioner of Customs submitted it over his signature—to the Department of Defense back late last year. Those basically were our conclusions.

Senator PRYOR. Once again, I apologize for having you fellows wait so long before you got up to make your statements and answer a few questions. There are further questions, for the record, we will submit.[1] This has been our first hearing. I hope there will be others on the mechanics of licensing arms or potential arms dealers.

It's been very informative, and, I hope, constructive. We are very appreciative of your participation and also the Customs Service's very strong commitment to enforcement of all the very many laws that you have to carry out. We are deeply grateful to both of you. Thank you very much.

Mr. WALTON. Thank you, Mr. Chairman.

[Whereupon, at 1:46 p.m., the Committee adjourned to reconvene at the call of the Chair.]

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[1] See p. 92.

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

William B. Robinson
Director, Office of Munitions Control
Department of State

PRESENTATION BEFORE THE SENATE'S GOVERNMENTAL AFFAIRS COMMITTEE ON FEBRUARY 20, 1987

Mr. Chairman, Honorable Committee Members: I thank you for the opportunity to acquaint you with the mission and functions of the Office of Munitions Control of the Department of State.

Section 38(a)(1) of the Arms Export Control Act authorizes the President to control the export of defense articles and services. This authority has been delegated by Executive Order 11958 to the Secretary of State; and within the Department, the authority was delegated through the Under Secretary for Security Assistance, Science and Technology and the Assistant Secretary for Politico-Military Affairs and the Director of the Office of Munitions Control or OMC.

OMC administers the United States Government program to control commercial exports of defense articles and defense services, including related technical data . The main objective of this control is to further world peace, safeguarding the national security and foreign policy concerns of the United States.

OMC exercises its responsibility through a licensing process prescribed in the International Traffic in Arms Regulations, commonly called the ITAR. The ITAR is found in Title 22, Code of Federal Regulations, Parts 121-130. It defines the defense articles and services which constitute the U.S. Munitions List; requires registration of manufacturers and exporters of defense articles and services; and prescribes policy and procedures for applying for licenses to export defense articles and defense services, including technical data.

The U.S. Munitions List enumerates the articles OMC controls. The Department of State, with the concurrence of the Department of Defense, decides what constitutes defense articles for export control purposes.

When in doubt as to whether an item is covered by the U.S. Munitions List, the Department of State consults with the Departments of Defense and Commerce in a commodity jurisdiction procedure to determine whether State or Commerce should have licensing jurisdiction. Items which are not covered by the Munitions List are subject to Commerce Department controls.

Applications for export authorization are required whenever Munitions List articles, which can include both classified and unclassified technologies, are to be:

1- commercially exported ;

2- commercially exported temporarily for demonstration or other purposes and returned to the United States ;

3- commercially brought to the United States in transit to a third country or for return to the country of origin ;

and, 4- commercially described, for disclosure to foreign nationals or export abroad, using information defined as technical data .

Licenses issued for these purposes are valid for two years.

In addition, proposed transfers to third countries of equipment previously exported from the United States under a Department of State license, proposed manufacturing license and technical assistance agreements, and amendments to existing agreements, must be submitted to OMC for approval before they take effect.

OMC does not license munitions which are exported to a foreign country as part of a government-to-government, or FMS, transfer.

In FY 1986, OMC processed over 49,000 license applications, manufacturing license and technical assistance agreements, and requests for advisory opinions and commodity jurisdiction determinations. Over the past several years, this figure has increased at an average annual rate of ten percent, while the size of OMC's staff has remained steady at about 30. Five licensing officers review and decide the bulk of OMC's cases; the Special Assistant for Space and Nuclear Affairs in the Office of the Director handles space and nuclear related cases.

OMC reviews each application on a case-by-case basis to determine that the proposed export is consistent with:

1- applicable statutes, precedents and the ITAR

2- U.S. security and foreign policy, and the furtherance of world peace

Approximately eighty percent of the applications received by OMC can be acted on without review by other offices; most export authorizations are promptly approved or denied by OMC and returned to applicants within two weeks. The remaining cases, because of destination, quantities, and/or commodity significance, may be referred for review to other offices of the Department and appropriate federal agencies to assure that an approval would in fact further world peace, and the security and foreign policy of the United States.

OMC conducts end-use checks through U.S. embassies and consulates overseas to verify information provided by U.S. applicants. Cases affecting U.S. arms control objectives and negotiations, and regional balance of forces are routinely referred to the Arms Control and Disarmament Agency. On security and technical matters, OMC officers may seek the views of various offices of the Department of Defense, the military service most familiar with the article being exported, the National Aeronautics and Space Administration, the Department of Energy and other agencies. In matters implicating sensitive U.S. foreign policy concerns, OMC may request the views of regional and functional bureaus in the Department of State.

OMC takes final action on these applications based on interagency review, reconciling any differences between reviewing offices. If an application is denied, a request for reconsideration may be submitted.

The Arms Export Control Act of 1976 contains various reporting and notification requirements for arms transfers and commercial arms sales. These reports and notifications are coordinated with the Bureau of Legislative and Intergovernmental Affairs of the Department of State.

Section 3(d)(3) requires the President to submit to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee, a written report before consenting to the transfer of any major defense equipment valued at $14 million or more, or of any defense article or defense service valued at $50 million or more, licensed or approved under Section 38 of the Act. This report must include the name of the country or international organization proposing the transfer, a description and cost analysis of the proposed article or service transfer, the name of the proposed recipient, and the reasons and the date on which the transfer is to be made.

Section 25(a)(1) requires the President, as part of the annual presentation to Congress for proposed security assistance programs for the following fiscal year, to submit a report on commercial arms sales. This report must cover all sales of major weapons or weapons-related defense equipment for $14 million or more, and any other weapons or weapons-related defense equipment for $50 million or more which are likely to result in the issuance of the license during the fiscal year. This part of the report, which is prepared on February 1 of each year, is based on pending license applications and agreement approvals as of that date.

Section 36 (a)(4) requires the President to submit to the Speaker of the House of Representatives and to the Chairman of the Senate Foreign Relations Committee an unclassified report, no later than 60 days after the end of each quarter, listing all licenses and approvals, for the export to each foreign country and international organization of major defense equipment, by category, sold for $1 million or more. The report should include the total value of all defense articles and services so licensed for each foreign government and international organization.

Section 36 (a)(8) requires the President to submit to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee an unclassified report, no later than 60 days after the end of each quarter, describing all political payments, contributions, gifts, commissions or fees reported to the Secretary of State pursuant to Section 39 of the Act. The report should include the name of the person who made the payment, contribution, gift or fee, and the name of the person or sales agent receiving it, the date and amount of the payment, and identification of any business information considered confidential by the person submitting it.

Section 36(c)(1) requires that, before issuing a license for the export of major defense equipment for $14 million or more, or of defense articles or services for $50 million or more, the President submit to the Speaker of the House of Representatives and to the Chairman of the Senate Foreign Relations Committee, an unclassified, numbered certification specifying the foreign country or international organization to which the export will be made, as well as the dollar value and description of the proposed export. Unless the President states in the certification that an emergency exists which requires a commercial sale to become effective immediately, a license for export shall not be issued until at least 30 calendar days after the Congress receives the certification.

Section 36 (d). requires that, in the case of an approval under section 38 of the Act of a technical assistance or manufacturing licensing agreement involving significant combat equipment, for - or in -a country that is not a member of NATO, the President to submit a report similar to the certification required by Section 36(c) (1) before such approval is given.

OMC relies primarily on the U.S. Customs Service for enforcement of export controls, and provides support and assistance to law enforcement agencies in their investigations and prosecution of violations.

At this point I will try to answer any questions you may have to the best of my ability:

RESPONSES TO WRITTEN QUESTIONS

Question 1. For those countries found to have violated, or allowed the violation of, end use certifcates or third country transfer procedures since 1981, what actions have been taken to prevent or discourage repetition? Which are those countries? Do any written criteria exist for "fighting" a license application for sales to a country for a munitions list item already in excessive supply in a country or not logically needed by a country?

Answer. We have reported to the Speaker of the House and the Chairman of the Senate's Foreign Relations Committee, as required under Sections 3(c) and 3(e) of the Arms Export Control Act, regarding possible violations of obligations concerning the use and transfer of United States-origin defense articles and services, as described in those sections. We concomitantly made demarches to the countries concerned through diplomatic channels, expressing our concern and seeking immediate corrective action in accordance with our legal requirements. We have also sought through diplomatic means the agreement of foreign governments to take steps to monitor offending companies more carefully to prevent further violations.

The list of countries is provided in the classified supplement to this question.

There are no written criteria for the identification of Munitions List items "in excessive supply in a country." There are written instructions on the denial of certain commodities to certain countries.

Question 2. In what instances since 1981 have representatives of the Department of State exercised any form of diplomatic pressure with regard to a foreign country in connection with presumed violations of the ITAR or U.S. arms export legislation?

Answer. We have reported to the Speaker of the House and the Chairman of the Senate's Foreign Relations Committee, as required under Sections 3(c) and 3(e) of the Arms Export Control Act, regarding possible violations of obligations concerning the use and transfer of United States-origin defense articles and services, as described in those sections. We concomitantly made demarches to the countries concerned through diplomatic channels, expressing our concern and seeking immediate corrective action in accordance with our legal requirements. We have also sought through diplomatic means the agreement of foreign governments to take steps to monitor offending companies more carefully to prevent further violations.

The list of countries is provided in the classified supplement to this question.

Question 3. Why does OMC not have a debarment list such as Commerce's? [Interpretation.]

Answer. OMC does not have a debarment list because there are no current debarments. At such time when a debarment takes place, we fully intend to flag the applicant in our computer

We are in the process of studying the mechanism to issue debarments at OMC on the basis of Department of Commerce denial orders (per 22 CFR 127.6(a)(3)) and adapting our ADP program to flag the denied entities during the application input process, to alert the licensing officer. It is estimated that the first such actions will be undertaken during the current fiscal year, given the availability of resources.

Question 4. Was Associated Industries, the Semmler brothers, or the Germans prohibited from getting licenses for commercial arms exports when they were put on the denial list?

Even though they have been indicted, even though they illegally sold helicopters to North Korea, they would not be debarred automatically; is that correct? Is that what you're saying?

Do you recommend that a change in the law should take place, or are you comfortable with that law?

Answer. Section 127.6 of the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 127.6, empowers the Department to debar a person from the export of defense articles, defense services, and technical data based upon one of the following three grounds:

1. "conviction" of a specified criminal offense "as defined in 22 C.F.R. § 127.3";

2. issuance of a Department of Commerce order to deny, suspend or revoke privileges under 15 C.F.R. Part 388 or to exclude from practice under 15 C.F.R. 390.2, "whenever the facts provide a reasonable basis for concluding that the person cannot be relied upon to comply in the future with 22 U.S.C. 2778 or with [the ITAR]"; or

3. a violation of § 2778 or the ITAR, when the violation provides a reasonable basis to determine that violator will not comply with § 2778 or the ITAR in the futures, and the violation is established in accordance with the administrative procedures established in Part 128 of the ITAR.

If grounds for debarment exist, debarment is not automatic. It must be established on a case-by-case basis in accordance with the express requirements of the ITAR.

We believe that this regulatory scheme is sound. It seeks to strike a fair balance between the economic interests of the applicant and the national security and law enforcement concerns of the Government. It affords due process to the proposed debarred party by requiring that the United States Government establish debarment

Question 5. Do you believe that the law should be amended to establish certain minimum criteria for the registration of persons or entities as manufacturers or exporters of arms?

Answer. It should be recalled that registration does not constitute permission to export defense items on the U.S. Munitions List. In order to actually export defense items, a person must be granted a specific license per transaction. Under Section 126.7 of the ITAR (22 C.F.R. § 126.7), license applications may be denied on grounds of debarment by the Department of State, issuance of a denial order by the Department of Commerce, violations of the Arms Export Act or the ITAR, and U.S. foreign policy and national security concerns.

We acknowledge the validity of checking the background of individual registrants and applicants as a means to further establish the bona fides of a particular transaction. We are also cognizant of the fact that registrants and applicants are mostly large, established corporations. Therefore, background checks would require the task of investigating a large number of corporate officers. Were the express statutory or regulatory authority and administrative resources provided, we would not object to a requirement to deny registration on grounds of a criminal conviction for violation of export control laws, espionage, other national security related laws, or perjury.

Question 6. I'm talking about the licenses as well, the granting of—It is a matter of custom and practice in the United States that persons who have been convicted of crimes are deprived of certain rights and freedoms which other citizens have. That's a regular matter of practice in the United States.

The question really is, should that practice be expanded to the sale outside the United States of arms made in the United States? Should there be some mechanism for including as a factor, in evaluating applications for licenses to sell arms, the character of the applicant, as opposed to exclusively the subject matter of the license application?

Answer. The ITAR presently provides a mechanism for denying a license application based upon the character of the applicant as opposed to exclusively the subject matter of the license application. Several of the grounds enumerated in the ITAR for denial, suspension, amendment or revocation of a munitions license or agreement speak expressly to the status of the applicant as a debarred or denied party or as a violator of the Arms Export Control Act (22 U.S.C. 2278) or the ITAR. Section 126.7(a) of the ITAR, 22 C.F.R. § 126.7(a), provides in full:

Policy. An export license or a manufacturing license agreement or a technical assistance agreement may be disapproved and a previous approval or license revoked, suspended or amended without prior notice whenever: (1) the Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States; or (2) whenever the Department of States believes that 22 U.S.C. 2778 or any regulation contained in this subchapter has been violated; or (3) whenever a party to the agreement has been debarred under § 127.6 of this subchapter; or (4) whenever an order of debarment or suspension has been made applicable to an applicant, license, or party to an approved or proposed agreement pursuant to Part 127 of this subchapter or pursuant to C.F.R. Part 388; or (5) whenever a person who has been debarred or suspended has a significant interest in the transaction.

Question 7. Is it correct that the revised ITAR requires the registering and licensing of U.S. citizens providing military advice, assistance or training to foreign governments or paramilitary group? Have any of the individuals or groups which have been reported to have been involved in the fighting in Central America (e.g. Mr. Eugene Hasenfus and Mr. Sam Hall) registered per this requirement? How many individuals have registered pursuant to this requirement?

Answer. It is correct that the ITAR expressly prescribes registration and license requirements for the provision of defense assistance or training to foreign governments or nationals.

Section 122.1(a) of the ITAR requires registration of ". . . Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services . . ." 22 CFR Part 120.8 defines defense services as:

"(a) The furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or (b) The furnishing to foreign persons of any technical data, whether in the United States or abroad."

The licensing requirements for the provision of defense services are contained in 22 CFR Part 124.

The Department has no registration records for Mr. Eugene Hasenfus or Mr. Sam Hall. We will be happy to provide the Committee available registration records of any company or individual specifically requested.

The Department has no record of any license application from either a Mr. Eugene Hasenfus or a Mr. Sam Hall. This licensing information is being provided to the Committee in confidence in accordance with 22 U.S.C. section 2778(e), incorporating 50 U.S.C. App. 2411(c).

If any individual exports Munitions List articles, technical data or services within the meaning of the ITAR, a license from the office of Munitions Control should be obtained in accordance with the ITAR.

The total number of registrants at OMC is approximately 4,500 firms and individuals.

Question 8. Is OMC contemplating putting in writing the criteria for referring a license application to another agency? The criteria for reviewing license applicees? For application rejection? For end use investigations? What additional resources would OMC require to be able to put these and other appropriate criteria in written form? On what basis are decisions on these matters presently being made?

Answer. Enclosed for your perusal (TAB A) is a copy of the recently prepared OMC Procedures Manual. It contains criteria for referral to other State Department bureaus and separate agencies. Other criteria followed by OMC are found in the ITAR, for example, Part 120.5, which provides for referral of commodity jurisdiction requests to DOD and DOC.

Written criteria for reviewing license applications are contained primarily in the ITAR. For example, Part 126.1 states that it is the policy of the United States to deny licenses with respect to proposed exports to or from specified countries, including the Soviet Union and South Africa.

License applications are reviewed for compliance with the ITAR, the Arms Export Control Act, as amended, other applicable statutes, standing policies and directives. When applications are found not to be in compliance with these statutes, regulations, policies and/or requirements, they are either disapproved or returned without action (RWA). In FY 86, approximately 10% of all applications were rejected (838 applications were denied and 3995 were returned without action). End-use inquiries reflect a judgment on the part of licensing personnel that the information presented on behalf of a license request raises questions about the bona fides of the proposed transaction.

Question 9. How often are applications referred to the Defense Department for technology review? Officials in the Commerce Department have expressed concern that their referrals to DoD have taken too long. Have you experienced the same problem? What is the average turn around time for Dod referrals?

Answer. OMC frequently refers applications to DOD for its review and recommendations. The average of applications referred to DOD is currently about sixteen percent of the caseload. In general, OMC has not experienced difficulties with DOD turn around time, which is currently about twelve working days.

Question 10. What is the average turn around time for various types of license applications? To what extent is this a problem for OMC? Have other agencies or manufacturers expressed concern about this turn around time?

Answer. OMC is currently developing a measurement system in cooperation with the Bureau of Labor Standards, Department of Labor, to obtain accurate statistical readings for monitoring output effectiveness.

Currently, we estimate that 75 percent of the annual caseload has a turn around time of ten working days. The other 25 percent comprises cases staffed to other offices within the Department or other agencies, cases requiring Congressional notification, and cases which require COCOM notification. It is not rare for these cases to take up to three months, or longer.

Turn around time presents a problem to OMC insofar as it contributes to cumulative pending cases and queries from exporters. It also presents a problem to industry and, consequently, concerns those of us who are trying to render a public service.

Industry associations have expressed their concerns over turn around time. However, they have done so in a manner supportive of OMC's ability to continue render-

ing a public service despite an increasing caseload without concomitant increases in resources.

Question 11. What automated checks does OMC's computer system perform for individual license applications, for example for previous violations of the ITAR, for debarments, for Customs Service areas of concern or for any administrative actions of the U.S. Government? Does your computer system link directly to those in other agencies? Are there any shared data bases? Are there any plans for such capability? What additional resources would be needed?

Answer. When applications are put into the system, a flashing device alerts the input clerk if a registrant is flagged. The systems is capable of flagging registrants for a number of reasons, among which are: expired registrations, registrants which interest our compliance staff, etc.

Our computer is not linked to any other agency.

Our data is not shared.

Much of the information in our data base includes confidential business information. The Department is under a statutory obligation to limit its dissemination (22 U.S.C. Section 2778(e), incorporating 50 USC App. Section 2411(c)). There are no plans for establishing a shared data base with other agencies of the USG.

Because OMC wishes to expedite adjudications, it has approved a plan to install a DOD terminal at OMC so that that agency's recommendations may be transmitted faster and more efficiently.

Question 12. OMC has on file over 4,000 "registrants" who can apply for export licenses. Are all registrants filed in your computer system? Have all US manufacturers of Munitions List items registered with OMC as required by the ITAR? Has any such check been made in the last five years?

Answer. All registrations, active and expired, are maintained in our data base.

OMC has no means to determine whether every U.S. manufacturer and exporter of Munitions List items has compiled with registration requirements, since OMC does not know the identity of every manufacturer and exporter. We have made an effort to make the requirement widely known through presentations at industry seminars and conferences, and through the OMC Newsletter. Failure to register may result in severe penalties—but willful failure must be proven.

Question 13. Please provide a list of those FY 1986 license applications that were rejected by the US Government and that applied for the export of munitions list items not presently procured by the US Armed forces for their own use?

Answer. OMC's ADP system does not have the capability to produce the program requested. However, there is no policy proscription against export of Munitions List items not in the DOD inventory. Exports of such items are considered on a case-by-case basis.

Question 14. How many debarment orders has OMC effected or initiated since 1981? Since 1976? Charging letters? Orders imposing civil penalties? Probations or suspensions? End user investigation? Please provide documentation of each such instance.

Answer. OMC issued two debarment orders since 1981 and four since 1976. Civil penalties and probations are contained in the debarment orders. Copies of the four debarment orders are enclosed (TAB B).

OMC's ADP system does not have the capability to retrieve data on which applications have been subjected to end use inquiries. An estimate of 50 per year since 1976 would not be unreasonable.

Question 15. Does OMC ever require End User Certificates E.U.C. from consignees for articles that are not Significant Military Articles? What standards are applied for requiring a E.U.C.?

Answer. By regulation (22 CFR 123.10(a)), OMC requires a Non-Transfer and Use Certificate (DSP-83) for exports of significant military equipment. Additionally, pursuant to 22 CFR 123.10(c), OMC requires a DSP-83 in instances in which a licensing officer determines that the information provided for the purposes of obtaining a license is insufficient to establish clear bona fides.

Question 16. What are OMC's current requirements, formally and in practice, for license applications to identify precisely the item to be licensed (eg. part name and precise number of items) and the specific port and method of export to ensure that item, or items, are exported through Customs in the applied for manner? Have you sought advice from Customs on this issue?

Answer. OMC guidelines for filling out license applications are the same in form as in practice. Instructions are provided on the cover sheet of each application form. Sample DSP-5, 61, 73 and 85 are enclosed for your perusal (TAB C).[1]

The Customs Service maintains a Liaison Officer at OMC. Part of the Liaison Officer's job is to coordinate matters of mutual interest. Should Customs encounter dif-

[1] The information referred to has been retained in Committee files.

ficulties with instructions provided to applicants, the officer would surely bring them to OMC's attention.

Question 17. Please provide as full as possible an explanation for the discrepancy between the value of licenses approved each year and the value of actual exports. To what extent is this discrepancy explained by redundant licenses? To what extent is it explained by other specific factors?

Answer. There are a number of reasons why the value of licenses issued is greater than the value of actual exports. The discrepancy itself should not raise questions of impropriety, since the value authorized is greater than the value of actual exports. If the situation were reversed, then it would be worrisome.

One contributing variable is that some licenses expire before the applicant can arrange for shipping, so a repeat license is sought. Another is that the foreign consignee cancels the order, either entirely or partially. Yet another is that the applicant has only been able to fill a partial order within the alloted period of validity. Lastly, receipt of the Customs Service validated forms (SED's) notifying OMC of the actual shipment are often delayed, thereby accounting for imcomplete reports within the license's validity period.

Question 18. What percentage of license applications are accompanied by documentation other than letters of intent or purchase orders signed by the purchaser? What would be the effect if disallowing "other appropriate documentation" in support of license applications?

Answer. "Other accompanying documentation" is not a call word in our ADP system. Therefore, an accurate percentage cannot be retrieved from our data base. Nevertheless, an educated estimate of applications which are accompanied by documentation, such as commodity specifications, could be put at seventy percent of the caseload.

Disallowing "other appropriate documentation" would have little or no effect on the speed with which a document can be processed. However, it would have a negative effect on the accuracy with which an adjudication can be made.

Question 19. How many agent fee reports were reported to Congress for FY 1986? Is it likely that these reports reliably report all agent fees and political contributions paid by any party in connection with FY 86 sales? If not, why?

Answer. FY 86, OMC submitted to Congress 38 applicant reports required by 22 CFR Part 130.

OMC has not been apprised of reasons to doubt generally the accuracy of these reports. In specific cases of doubt, Customs would be asked to conduct an investigation of an allegedly false report.

The Committee may be aware that the Arms Export Control Act does not require limitations on payments or contributions made in connection with commercial sales licensed under Section 38 of the Act. Section 39 requires that they be reported. However, the Foreign Corrupt Practices Act, 15 USC Section 78dd-2, proscribes foreign corrupt practices by domestic concerns, that is, payments to or promises to pay foreign officials, foreign political parties, foreign party officials, or foreign candidates for the purpose of influencing foreign action to assist the domestic concern in procuring business.

Question 20. What official exercised ITAR waiver authority to permit sales in FY 1986 to Iraq and Roumania?

Answer. The approval of the licenses in question came about as a conscious exception to policy. These approvals were carried out after extensive consultations, at appropriate levels within the Department and elsewhere, indicated that they were in the interest of U.S. foreign policy and national security concerns.

Departure from policy is normally authorized at high levels within the Department, frequently at the Under Secretary level.

Question 21. Interviews with OMC staff indicate that OMB has approved a three year plan to expand OMC's staff. Please provide a copy of the plan approved by OMB or any other plan approved within the State Department to expand OMC's support resources.

Answer. The Department's submission to OMB is enclosed (TAB D).[1]

Additionally, the Department has submitted legislation to establish an account of $100,000, deriving from OMC registration fees, to be used for the purchase and upgrading of OMC ADP equipment, software and administrative support.

Question 22. Please provide any reports by the Director of OMC to any superiors in the State Department or by others in the Department of State, including any progress or performance reports concerning OMC during the past 5 years.

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[1] The information referred to has been retained in the Committee files.

Answer. The question, as it stands, covers a wide variety of reports. We are presently in the process of retrieving reports that are responsive to the question, and may be of interest to the Committee, and are reviewing them within the Department with a view towards release to the Comittee.

Question 23. The Department of State has broad authority to bar commercial sales for reasons of foreign policy and national security. Is it considered in the interests of US foreign policy and national security to have no prohibition against convicted felons, debarred or suspended manufacturers or individuals under investigation being registered exporters or receiving approved licenses for the export of munitions list items? Please explain why no such prohibition apparently exists in State Department policy guidance.

Answer. It should be recalled that registration does not constitute permission to export defense items on the U.S. Munitions List. In order to actually export defense items, a person must be granted a specific license per transaction. Under Section 126.7 of the ITAR (22 CFR 127.6), license applications may be denied on grounds of debarment by the Department of State, issuance of a denial order by the Department of Commerce, violations of the Arms Export Control Act of the ITAR, and U.S. foreign policy and national security concerns. Thus, prohibitions of the type referred to in the question presently exist in the ITAR.

We acknowledge the validity of checking the background of individual registrants and applicants as a means to further establish the bona fides of a particular transaction. We are also cognizant of the fact that registrants and applicants are mostly large, established corporations. Therefore, background checks would require the task of investigating a large number of corporate officers.

Were express statutory or regulatory authority and administrative resources provided, we would not object to a requirement to deny registration on grounds of criminal conviction for violation of export control laws, espionage, other national security related laws, or perjury. Additionally, we would be prepared to consider amending 22 CFR 126.7 to provide for additional grounds for denial of a license such as a conviction for espionage, other national security related crime, or perjury.

Question 24. If it is correct that aid and FMS sales are prohibited for internal security forces of foreign governments, why are commercial sales of weapons and other munitions list items permitted to foreign internal security forces?

Answer. It is not correct that aid and FMS sales are prohibited for internal security forces of foreign governments. To the contrary, both Section 502 of the Foreign Assistance Act and Section 4 of the Arms Export Control Act expressly authorize the provision of defense articles and defense services for internal security purposes. The question above apparently refers to Section 660 of the Foreign Assistance Act which prohibits grant MAP aid (but not foreign military sales) to law enforcement personnel. Other types of assistance, such as narcotics control and anti-terrorism assistance, may be provided even to law enforcement authorities.

Commercial arms sales to internal security forces or law enforcement personnel of foreign governments are not prohibited by law. Country-specific exceptions exist, however, such as the prohibition on commercial exports to or for the Government of Chile contained in Section 726 of the 1981 International Development and Cooperation Act. We believe that commercial sales to internal security forces or law enforcement personnel of friendly and allied governments, consistent with human rights and other considerations, may be in the interest of U.S. foreign policy and national security in certain cases.

Question 25. Would the Department of State find it useful to know what agent fees and political contributions may have been paid to or by any party in connection with a FMS or a commercial sale?

Answer. The Arms Export Control Act, Section 39, instructs the Secretary of State to prescribe regulations requiring the report of such fees and political contributions paid in connection with munitions transactions.

In implementation of this statutorily mandated requirement the Department of State has published regulations in the International Traffic in Arms Regulations, 22 CFR, Part 130. This reporting requirement is endorsed as a means to control and deter the use of "improper influence" in munitions transactions cited in Section 39(c) of the Arms Export Control Act.

Question 26. In what instances since 1981 have bureaus or agencies in the Department of State recommended to the Office of Munitions Control that a specific license application for a commercial sale be rejected, That a debarment be ordered? That sales to a specific purchaser be prohibited or specifically investigated?

Answer. The Department's ADP system cannot provide recommendations for denial on call. About 20% of cases are referred to appropriate offices within the department or to other agencies for expert review. OMC makes final disposition of

these cases on the basis of the recommendations of the reviewing offices and agencies. Although there may be several reviewing entities, a recommendation by any of them to deny the case is generally sufficient to result in a formal denial. If the veto is cast by the cognizant regional bureau in State, it will be denied on foreign policy grounds even though the other reviewing parties may have expressed no objections. If, however, the recommended denial stems from one of the functional bureaus or ACDA, OMC will consult the regional bureau concerned to see if it will concur in the denial or attempt to resolve the difference by escalating the decision to the policy level if necessary. Generally all but the most contentious cases are resolved at the level of the Under Secretary for Security Assistance, Science and Technology.

Follow Up to Senator Sasser's Question on Clearance of License Officers

OMC representative Clyde Bryant was asked, by Sen. Sasser, a brief series of questions pertaining to the types of clearances that OMC licensing officers possess. Having established that intelligence information is used in evaluating cases, Senator Sasser asked if the officers are cleared to see Top Secret/Compartmented information. The response was the officers all have Top Secret clearances.

Follow up questions:

Question 1. How many licensing officers possess intelligence clearances? Specifically, how many possess Top Secret codeword (SCI) clearances?

Answer. There are eight persons at OMC who hold Top Secret (SCI) clearances: the Director, the Deputy Director, the Special Assistant to the Director, the Special Assistant for Space and Nuclear, the Chief of the Support Services Division, the Chief of the Arms Licensing Division, the Deputy Chief of the Arms Licensing Division and the Chief of the Reports and Records Branch. When Special intelligence treatment is appropriate, one of these officers assumes charge of the specific requirements or cases.

All other OMC personnel hold Top Secret clearances.

Question 2. Do your licensing officers coordinate specific cases with other intelligence officers, either inside or outside the State Department? Please describe this coordination process in the following areas: Which offices are contacted? Are there any established procedures or guidelines to structure these contracts? And, what criteria determine when these contracts are deemed necessary?

Answer. Coordination with the intelligence community is carried out through the Bureau of Intelligence and Research. Contact with Customs' Office of Strategic Investigation is maintained on a direct basis through the Customs Liaison Officer stationed at OMC.

There are two focal points at OMC for the coordination of intelligence material. The Special Assistant to the Director handles general intelligence coordination, and the Chief of the Support Services Division handles case-specific intelligence.

The Special Assistant to the Director reviews general telegraphic and documentary traffic for applicability to areas of concern at OMC. He/she brings pertinent items to the attention of, and assigns action to, appropriate OMC personnel. He/she also coordinates projects of a general scope with specific members of the intelligence community.

The Chief of the Support Services Division, in his/her compliance capactiy, coordinates case-specific intelligence needs, mainly through Customs' Office of Strategic Investigations. He/she applies intelligence developed for a specific munitions case to the decision-making process by coordinating with the action officer of a particular case.

The initiation of intelligence collection by OMC, such as end-use checks, is predicated upon a quesiton regarding bona fides of a particular case on its face. OMC's goal in this respect, contingent upon adequate resources, is to initiate intgelligence collection on a random spot-check basis, notwithstanding the absence of an irregularity on the face of an application.

PREPARED STATEMENT OF LT. GEN. PHILIP C. GAST

TESTIMONY OF THE DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY
BEFORE
THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE
20 FEBRUARY 1987

MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE YOUR COMMITTEE TODAY TO TESTIFY REGARDING THE IMPLEMENTATION OF THE SECURITY ASSISTANCE PROGRAM. IN MY OVERVIEW I WILL DISCUSS THE FOLLOWING TOPICS.

- LEGISLATION AND THE TYPES OF PROGRAMS.
- RESPONSIBILITIES.
- PURPOSES OF SECURITY ASSISTANCE.
- POLICIES.
- ARMS TRANSFER CONSIDERATIONS AND KEY DECISION POINTS.
- THE FMS PROCESS.
- DIRECT COMMERCIAL SALES FINANCED WITH FMS CREDITS.
- CONGRESSIONAL OVERSIGHT.

IN THE INTEREST OF TIME, I WILL SUMMARIZE MY DISCUSSIONS OF THESE TOPICS. I WILL BE PLEASED TO EXPAND UPON MY DISCUSSION IF MY SUMMARY IS TOO BRIEF OR IF YOU HAVE QUESTIONS.

THE BASIC LEGISLATION WHICH AUTHORIZES THE SECURITY ASSISTANCE PROGRAM IS:

- THE FOREIGN ASSISTANCE ACT OF 1961 (FAA).
- THE ARMS EXPORT CONTROL ACT OF 1976 (AECA) AND ITS ANNUAL AMENDMENTS BY INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACTS.

THESE STATUTES IDENTIFY THE PROGRAMS ENCOMPASSED BY THE SECURITY ASSISTANCE PROGRAM. THEY ARE:

- o THE MILITARY ASSISTANCE PROGRAM (MAP) - KNOWN AS THE GRANT AID PROGRAM.
- o THE INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) PROGRAM - WHICH PROVIDES FOR GRANT TRAINING.
- o THE FOREIGN MILITARY SALES (FMS) PROGRAM.
- o THE FOREIGN MILITARY SALES CREDIT (OR LOAN) PROGRAM.
- o THE FOREIGN MILITARY CONSTRUCTION SALES PROGRAM.

THE FAA PROVIDES THE STATUTORY PURPOSES AND GUIDANCE FOR THE MAP AND IMET PROGRAMS. THE BASIC AUTHORITY FOR FMS AND FMS CREDIT PROGRAMS IS THE AECA WHICH HAS BEEN AMENDED ANNUALLY SINCE 1976.

UNDER THE AECA THE SECRETARY OF STATE IS RESPONSIBLE FOR THE GENERAL DIRECTION AND POLICY GOVERNING CONVENTIONAL ARMS TRANSFERS. WITHIN THE DEPARTMENT OF STATE, THIS RESPONSIBILITY IS VESTED IN THE BUREAU OF POLITICO-MILITARY AFFAIRS, WHICH IS ALSO RESPONSIBLE FOR CONTROL OF DIRECT COMMERCIAL SALES AND EXPORT LICENSING ADMINISTERED BY THE OFFICE OF MUNITIONS CONTROL.

THE DEPARTMENT OF DEFENSE IS RESPONSIBLE FOR IMPLEMENTING THE STATE DEPARTMENT APPROVED GOVERNMENT-TO-GOVERNMENT MAP, IMET AND FMS PROGRAMS. THE DEPARTMENT OF DEFENSE ALSO REVIEWS MAJOR REQUESTS FOR EXPORT LICENSES FOR DIRECT COMMERCIAL SALES OF ITEMS ON THE U.S. MUNITIONS LIST, WHICH ARE REFERRED TO THE DOD BY THE DEPARTMENT OF STATE OFFICE OF MUNITIONS CONTROL.

THE AECA DEFINES THE STATUTORY PURPOSES FOR SALES OF DEFENSE ITEMS. IT STATES THAT THE USG IS AUTHORIZED TO SELL DEFENSE

ARTICLES AND DEFENSE SERVICES TO ALLIES AND FRIENDLY FOREIGN GOVERNMENTS -

- o IN ACCORDANCE WITH THE RESTRAINTS AND CONTROLS SPECIFIED IN LAW, AND
- o IN FURTHERANCE OF THE SECURITY OBJECTIVES OF THE UNITED STATES.

IT FURTHER STATES THAT DEFENSE ARTICLES AND SERVICES MAY BE SOLD FOR THE PURPOSES OF:

- o INTERNAL SECURITY.
- o LEGITIMATE SELF DEFENSE.
- o PARTICIPATION IN REGIONAL OR COLLECTIVE SECURITY ARRANGEMENTS.
- o ENABLING FOREIGN MILITARY FORCES TO ENGAGE IN PUBLIC WORKS.

THE CONGRESS PLAYS A MAJOR ROLE IN THE REVIEW OF SECURITY ASSISTANCE PROGRAMS. IT RECEIVES REPORTS ON ALL SALES OF ONE MILLION DOLLARS OR MORE OF MAJOR DEFENSE ITEMS AND ON THE OVERALL PROGRAM. IT ALSO AUTHORIZES AND APPROPRIATES THE FUNDS FOR THE GRANT PROGRAMS (MAP AND IMET) AND FOR THE FMS CREDIT (LOAN) PROGRAM. THE CONGRESS IS PROVIDED WITH QUARTERLY REPORTS ON MOST FACETS OF THE PROGRAM AND IS NOTIFIED IN ADVANCE ON NUMEROUS ASPECTS OF THE PROGRAM, AS REQUIRED BY THE FAA AND AECA.

THE SECRETARY OF STATE ACTS UNDER THE DIRECTION OF THE PRESIDENT AND PROVIDES CONTINUOUS SUPERVISION AND DIRECTION TO BOTH THE GRANT AND FMS PROGRAMS AS WELL AS LICENSING OF EXPORTS OF COMMERCIAL SALES. HE DETERMINES WHETHER THERE SHOULD BE A

PROGRAM OR A SALE TO A COUNTRY, AND, IF SO, THE VALUE OF THE PROGRAM. HE IS ALSO RESPONSIBLE FOR THE INTEGRATION OF THE MILITARY ASSISTANCE PROGRAMS AND SALES WITH OTHER U.S. FOREIGN POLICY ACTIVITIES. HE IS RESPONSIBLE FOR REVIEW AND AUTHORIZATION OF ALL AGREEMENTS.

UNDER THE AECA THE SECRETARY OF DEFENSE IS RESPONSIBLE FOR PROGRAM IMPLEMENTATION FOR GOVERNMENT-TO-GOVERNMENT PROGRAMS. THIS INCLUDES:

- THE ESTABLISHMENT OF PRIORITIES IN PROCUREMENT, ALLOCATION AND DELIVERY OF EQUIPMENT.
- THE DETERMINATION OF MILITARY END-ITEM REQUIREMENTS.
- THE PROCUREMENT OF MILITARY EQUIPMENT IN A MANNER WHICH PERMITS INTEGRATION WITH SERVICES PROGRAMS.
- THE SUPERVISION OF GRANT END-ITEM USE.
- THE SUPERVISION OF TRAINING OF FOREIGN MILITARY PERSONNEL, AND
- THE MOVEMENT OF AND DELIVERY OF MILITARY EQUIPMENT.

THE DEFENSE SECURITY ASSISTANCE AGENCY WAS ORGANIZED IN 1971 TO ACT AS THE FOCAL POINT IN THE DEPARTMENT OF DEFENSE FOR ALL SECURITY ASSISTANCE ACTIVITIES. THE AGENCY IS REDELEGATED THE RESPONSIBILITIES AND AUTHORITIES ASSIGNED TO THE SECRETARY OF DEFENSE TO ADMINISTER AND EXECUTE THE SECURITY ASSISTANCE PROGRAM. AS DIRECTOR OF DSAA, I REPORT TO THE SECRETARY OF DEFENSE THROUGH THE UNDER SECRETARY OF DEFENSE FOR POLICY. A PRIMARY FUNCTION OF THE DSAA IS TO ACT AS THE COORDINATOR OF THE

POLITICAL CONSIDERATIONS OF THE STATE DEPARTMENT AND THE MILITARY CONSIDERATIONS OF THE DEFENSE DEPARTMENT. THE DSAA IS AN ORGANIZATION OF JUST OVER ONE HUNDRED AND FORTY CIVILIAN AND MILITARY EMPLOYEES LOCATED IN THE PENTAGON. ANNUALLY ABOUT 7,000 FMS REQUESTS ARE REVIEWED.

IN OUR IMPLEMENTATION OF THE PROGRAM WE FUNCTION THROUGH OUR MILITARY DEPARTMENTS AND DEFENSE AGENCIES AND EMPLOY MANY OF THE SAME SYSTEMS AND CAPABILITIES WE USE IN SUPPORT OF U.S. FORCES. OUR IMPLEMENTATION RECOGNIZES THE OBJECTIVES OF THE FMS PROGRAM.

OUR OBJECTIVES FOR THE FMS PROGRAM ARE:

- FIRST, WE WANT TO PROMOTE DEMOCRACY BECAUSE DEMOCRATIC GOVERNMENTS ARE LESS LIKELY TO BECOME INVOLVED IN WARS OF AGGRESSION.
- SECOND, WE WANT TO MAINTAIN AN OPEN, STABLE WORLD ECONOMY AND FREE ENTERPRISE SO THAT WE CAN EXPAND OUR EXPORTS AND INVESTMENT.
- THIRD, BY PROVIDING ASSISTANCE TO OUR FRIENDS AND ALLIES WE SEEK TO PREVENT REGIONAL CONFLICTS THAT THREATEN OUR INTERESTS, AND TO ENHANCE THE INTERNAL STABILITY OF FRIENDLY COUNTRIES. SHOULD CONFLICTS OCCUR, WE SEEK TO RESOLVE THEM BY HELPING OUR FRIENDS, RATHER THAN RESORT TO THE USE OF AMERICAN COMBAT FORCES.

THESE OBJECTIVES ARE SUPPORTED BY OUR BASIC POLICIES WHICH PROVIDE THAT:

- SALES WILL BE CONTROLLED IN ACCORDANCE WITH U.S. LAWS AND

PRESIDENTIAL DETERMINATIONS. DISCUSSIONS REGARDING SALES ARE MADE ON A CASE-BY-CASE BASIS, CONSISTENT WITH OUR FOREIGN POLICY AND NATIONAL SECURITY OBJECTIVES.

- SALES ARE NOT ENCOURAGED OR PROMOTED. RATHER, THE DOD WILL BE RESPONSIVE TO THE LEGITIMATE DEFENSE NEEDS OF OUR FOREIGN FRIENDS AND ALLIES.
- OFFERS FOR SALES ARE MADE ONLY IN RESPONSE TO FOREIGN REQUESTS. THE DOD DOES NOT MARKET FOR DEFENSE SALES. WE RELY ON THE MILITARY FORCES OF OUR FRIENDS AND ALLIES TO PROVIDE THE BULWARK OF THEIR OWN DEFENSE. THE UNITED STATES CANNOT AND SHOULD NOT STRIVE TO PROTECT ITS SECURITY INTERESTS THROUGHOUT THE WORLD SOLELY WITH U.S. FORCES, BUT WILL RESPOND TO THE STATED NEEDS OF OUR FRIENDS.
- SALES MUST BE IN THE U.S. NATIONAL INTEREST AND MEET A VALID MILITARY REQUIREMENT. THROUGH FMS WE SEEK TO STRENGTHEN OUR OWN SECURITY BY STRENGTHENING THE DEFENSE OF COUNTRIES WHOSE SECURITY IS CLOSELY RELATED TO OUR OWN. WE ENSURE THAT FOREIGN DEMANDS DO NOT IMPACT ON THE RESOURCES OF U.S. FORCES.
- WE DEAL EVEN-HANDEDLY WITH U.S. FIRMS. WE ENCOURAGE U.S. INDUSTRY PARTICIPATION IN SALES AND PROVIDE ASSISTANCE CONSISTENT WITH U.S TRADE POLICIES. WE DO NOT COMPETE WITH INDUSTRY FOR SALES. IF INDUSTRY CAN OTHERWISE COMPLETE THE SALE, THE DOD WILL SUPPORT THE AGREEMENT.

AS A MATTER OF POLICY, THE FINAL U.S. GOVERNMENT DECISIONS ON A SPECIFIC TRANSFER OF DEFENSE EQUIPMENT OR SERVICES UNDER FMS IS REACHED ONLY AFTER RECEIPT OF A REQUEST FROM A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION. NOT ALL REQUESTS ARE APPROVED AND MANY REQUIRE EXTENSIVE REVIEW AND CONSIDERATION PRIOR TO RELEASE DECISION. A PURCHASER IS MADE ELIGIBLE TO PARTICIPATE IN THE FMS PROGRAM ONLY AFTER THE PRESIDENT MAKES A DETERMINATION PURSUANT TO SECTION 3(A) OF THE AECA.

THE FOREIGN REQUEST TO PURCHASE U.S. DEFENSE ARTICLES MAY COME FROM ONE OF SEVERAL SOURCES:

- THE FOREIGN MINISTRY OF DEFENSE TO THE U.S. AMBASSADOR.
- THE FOREIGN COUNTRY'S AMBASSADOR TO THE STATE DEPARTMENT.
- THROUGH U.S. OFFICIALS DURING OFFICIAL COUNTRY VISITS.
- FROM FOREIGN OFFICIALS VISITS TO THE U.S. GOVERNMENT.
- MOST REQUESTS ARE RECEIVED THROUGH OUR SECURITY ASSISTANCE OFFICES OVERSEAS WHO ACT AS OUR OVERSEAS FIELD ACTIVITIES AND MILITARY ADVISORS. WE REQUIRE THAT OUR EMBASSY CONDUCT AN ASSESSMENT OF THE REQUEST AND PROVIDE ITS VIEWS AND SUPPORT.

THE REQUEST WILL NORMALLY BE FOR BROAD PLANNING AND REVIEW DATA (P&R) OR FOR MORE REFINED PRICE AND AVAILABILITY (P&A) ESTIMATES. AFTER REVIEW OF THIS PLANNING INFORMATION THE COUNTRY MAY REQUEST A FORMAL LETTER OF OFFER AND ACCEPTANCE (LOA). IN SOME LIMITED CIRCUMSTANCES THE COUNTRY MAY ASK

FOR U.S. ADVICE OR A MILITARY REQUIREMENTS SURVEY TO DETERMINE SPECIFIC REQUIREMENTS TO FILL SPECIFIC NEEDS.

WE HAVE ESTABLISHED PROCEDURES FOR APPROVAL OF EACH FMS REQUEST. REQUESTS FOR MAJOR ITEMS OF DEFENSE EQUIPMENT, GENERALLY REFERRED TO AS MAJOR DEFENSE EQUIPMENT (MDE) LIST ITEMS, ITEMS OF SIGNIFICANT MILITARY EQUIPMENT (SME) AS DEFINED BY THE INTERNATIONAL TRAFFIC IN ARMS MUNITIONS LIST OR ITEMS DEEMED TO BE OF A SENSITIVE NATURE, ARE COORDINATED WITHIN STATE AND DEFENSE BEFORE AUTHORIZATION OF RELEASE.

FIRST, APPROVAL IS SOUGHT FROM THE DEPARTMENT OF STATE, THEN WITH THE OFFICES OF THE ASSISTANT SECRETARIES OF DEFENSES FOR INTERNATIONAL SECURITY AFFAIRS OR INTERNATIONAL SECURITY POLICY. THE JOINT CHIEFS OF STAFF (JCS) AND THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION ARE REQUESTED TO COMMENT ON THE TRANSFER.

WITHIN DEFENSE, AND THE MILITARY DEPARTMENT REVIEW CONDUCTED BY THE JOINT STAFF, A BROAD SPECTRUM OF CONSIDERATIONS WILL BE EVALUATED: EACH ACTIVITY PROVIDES A POSITION ON POLICY CONSIDERATIONS WITHIN ITS FUNCTIONAL AREA OF RESPONSIBILITY, TO INCLUDE:

- U.S. FORCES EFFECTIVENESS/READINESS ASPECTS.
- THE RECIPIENTS MILITARY CAPABILITY AND CAPABILITIES WITHIN THE REGION.
- THE EFFECT OF ANY COMPROMISE OF MILITARY CAPABILITY.
- THE SECURITY OF THE ITEM AND SPECIAL SECURITY PROVISIONS.
- THE EFFECTS OF TECHNOLOGY TRANSFER AND SENSITIVITY OF TECHNOLOGY.

- THE AVAILABILITY OF THE SYSTEM AND CAPABILITY/AVAILABILITY OF LESS SENSITIVE OR LESS CAPABLE SYSTEMS.
- THE CAPABILITY OF THE RECIPIENT TO SUPPORT AND MAINTAIN THE SYSTEM.

BEFORE RELEASE IS APPROVED, A CONSENSUS RECOMMENDATION MUST BE OBTAINED FROM STATE AND ALL DOD ACTIVITIES.

FOR COMPLIANCE WITH SECTION 36(B) OF THE AECA, CONGRESS MUST BE NOTIFIED OF ALL OFFERS TO SELL MDE ITEMS OR SERVICES VALUED AT $14 MILLION OR MORE AND OF ALL SALES VALUED AT $50 MILLION OR MORE. WHEN CASES OF THIS NATURE ARE REQUESTED, DSAA DIRECTS THE MILITARY DEPARTMENTS TO INITIATE PREPARATION OF THE 36(B) DATA AND PREPARATION OF THE LOA CONCURRENTLY. THE DEPARTMENT OF STATE OBTAINS PRESIDENTIAL APPROVAL FOR THE SALE, IF REQUIRED, AND THEN DSAA FURNISHES PRELIMINARY ADVANCE NOTIFICATION OF THE SALE ON A CLASSIFIED BASIS TO THE CONGRESSIONAL STAFFS. THE ADVANCE NOTIFICATION PERIOD IS 20 DAYS FOR NON-NATO COUNTRIES. AFTER THE EXPIRATION OF THE ADVANCE NOTIFICATION PERIOD, A FORMAL NOTIFICATION IS PROVIDED TO THE CONGRESS.

EACH NOTIFICATION IDENTIFIES THE PURCHASER, THE VALUE OF THE SALE, THE QUANTITY OF ITEMS BEING SOLD, A DESCRIPTION OF THE ITEMS BEING SOLD, WHETHER THERE ARE AGENTS FEES INVOLVED AND THE AMOUNT OF THE FEES OR CONTRIBUTIONS MADE TO PROMOTE THE SALE, THE SENSITIVITY OF TECHNOLOGY PROPOSED TO BE RELEASED AND A DETAILED JUSTIFICATION OF THE REASONS NECESSATATING THE SALE IN VIEW OF THE SENSITIVITY AND LEVEL OF TECHNOLOGY.

IF EITHER THE SENATE FOREIGN RELATIONS COMMITTEE OR THE HOUSE FOREIGN AFFAIRS COMMITTEE HAVE ADDITIONAL QUESTIONS, DEFENSE WILL PROVIDE WHATEVER ADDITIONAL DETAILED INFORMATION IS REQUESTED CONCERNING THE PROPOSED SALE.

IF THE CONGRESS OBJECTS TO THE PROPOSED SALE BY A JOINT RESOLUTION ENACTED WITHIN 30 DAYS (OR 15 DAYS FOR NATO COUNTRIES, JAPAN, AUSTRALIA, OR NEW ZEALAND) THE LOA WILL NOT BE ISSUED. THE PRESIDENT MAY PROVIDE A CERTIFICATION THAT AN EMERGENCY EXISTS WHICH REQUIRES THE SALE IN THE NATIONAL SECURITY INTEREST OF THE UNITED STATES. THIS CERTIFICATION WOULD PROVIDE DETAILED JUSTIFICATION FOR THE DETERMINATION AND A DESCRIPTION OF THE EMERGENCY CIRCUMSTANCES.

IN ADDITION TO THE INFORMATION PROVIDED BY THE SENSITIVITY OF TECHNOLOGY STATEMENT, WHEN AN EXCEPTION TO THE NATIONAL DISCLOSURE POLICY (NDP) HAS BEEN GRANTED FOR RELEASE OF CLASSIFIED OR SENSITIVE TECHNOLOGY, A FURTHER NOTIFICATION OR REPORT WILL BE PROVIDED TO THE CONGRESS IF THE SENSITIVITY OF TECHNOLOGY OR CAPABILITY AS DESCRIBED IN THE ORIGINAL NOTIFICATION IS TO BE ENHANCED AND UPGRADED PRIOR TO DELIVERY. THIS NOTIFICATION WILL BE PROVIDED BEFORE CONTRACTING IF THE COST OF THE ENHANCEMENT IS ABOVE THE STATUTORY THRESHHOLDS.

DURING THE CONGRESSIONAL NOTIFICATION PERIOD, THE MILITARY DEPARTMENTS PREPARE THE FORMAL LETTERS OF OFFER (LOA). THE LETTER OF OFFER IS PROVIDED ON A STANDARD FORM WHICH IDENTIFIES

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THE ITEMS TO BE TRANSFERRED, QUANTITY, COST, DELIVERY LEAD TIME AND ANY OTHER DATA PERTINENT TO THE TRANSFER. THE LOA PROVIDES A COMPLETE PACKAGE FOR THE SYSTEM BEING OFFERED, TO INCLUDE THE END ITEM, MAINTENANCE SUPPORT, REPAIR PARTS, TOOLS AND IDENTIFICATION OF PUBLICATIONS, TRAINING, AND ALL OTHER ANCILLERY EQUIPMENT REQUIRED TO ENSURE THAT THE ITEMS WILL BE ABLE TO BE USED AND MAINTAINED PROPERLY. THE LOA ALSO CONTAINS AN AGREEMENT FOR THE GENERAL CONDITIONS OF THE SALE. THE PURCHASER AGREES:

- TO PAY THE TOTAL COST OF THE SALE.
- TO PROVIDE FUNDS AS REQUIRED BY THE DOD.
- TO USE THE ITEMS FOR THE PURPOSE PROVIDED.
- NOT TO RETRANSFER THE ITEMS TO ANY PERSON, FIRM OR GOVERNMENT THAT IS NOT THE PURCHASERS OFFICER, EMPLOYEE OR AGENT, WITHOUT WRITTEN CONSENT OF THE USG.
- TO MAINTAIN CLASSIFICATION AND USG LEVEL OF SECURITY FOR THE ITEMS TRANSFERRED.

SINCE THE DEPARTMENT OF DEFENSE DOES NOT NORMALLY EMPLOY THE USE OF AGENTS IN ITS ACQUISITIONS, THEIR USE ON FMS AGREEMENTS IS ALSO DISCOURAGED. IF THE CONTRACTOR REQUIRES THE INCLUSION OR AN AGENT, THE DOD WILL ALSO AGREE TO THE AGENT AND ADDITION OF AGENTS FEES UP TO THE MAXIMUM OF $50,000 ONLY, CONTINGENT UPON THE ESTABLISHMENT OF THE BONA FIDES OF THE AGENT AND THE RECOGNITION OF THE AGENT AND FEES BY THE FOREIGN PURCHASER.

ADDITIONALLY, THE DOD DOES NOT SUPPORT THE USE OF OFFSETS IN THE FMS PROGRAM, AND, IF OFFSETS ARE REQUIRED BY THE PURCHASER AS A

CONDITION OF THE SALE, THEY ARE REQUIRED TO BE NEGOTIATED DIRECTLY WITH THE CONTRACTOR AND NEITHER THE COST OF THE OFFSETS NOR THEIR MANAGEMENT ARE ALLOWED TO BE INCLUDED AS A PART OF THE FMS AGREEMENT.

AFTER COMPLETION OF THE CONGRESSIONAL REVIEW PERIOD, THE DSAA AUTHORIZES RELEASE OF THE LOA TO THE REQUESTING COUNTRY FOR REVIEW AND ACCEPTANCE. NORMALLY, THE COUNTRY IS AUTHORIZED A PERIOD OF 90 DAYS FOR ACCEPTANCE WITHOUT REVALIDATION OF THE DATA CONTAINED IN THE OFFER.

FOR REQUESTS WHICH DO NOT CONTAIN MAJOR DEFENSE EQUIPMENT, SIGNIFICANT MILITARY EQUIPMENT OR VALUES ABOVE THE LEVELS THAT REQUIRE CONGRESSIONAL REPORTING, THE MILITARY DEPARTMENTS PREPARE THE LOAS AND PROVIDE THEM TO DSAA FOR STAFFING, REVIEW AND COUNTERSIGNATURE. EACH LOA IS APPROVED BY STATE AND DEFENSE BEFORE IT IS RELEASED TO THE REQUESTING COUNTRY.

ACCEPTANCE OF THE FMS OFFER REQUIRES SIGNATURE OF THE FOREIGN COUNTRY REPRESENTATIVE WHO ACCEPTS THE STATED TERMS AND CONDITIONS. IMPLEMENTATION OF THE OFFER ALSO INCLUDES THE DEPOSIT OF FUNDS AND GUARANTEE OF FURTHER PAYMENTS TO COMPLETE THE PURCHASE.

THE DSAA PERFORMS FINANCIAL MANAGEMENT OF THE PROGRAM AT THE SECURITY ASSISTANCE ACCOUNTING CENTER WHICH IS CO-LOCATED WITH THE AIR FORCE FINANCE AND ACCOUNTING CENTER IN DENVER, COLORADO. THERE, EACH FOREIGN COUNTRY HAS A TRUST FUND WHERE ITS FUNDS ARE MAINTAINED IN FEDERAL ACCOUNTS AND DISBURSED AS REQUIRED TO MEET

THE COUNTRIES FINANCIAL OBLIGATIONS. MOST FMS AGREEMENTS ARE FINANCED WITH CASH.

THE FUNDS WHICH ARE AUTHORIZED AND APPROPRIATED UNDER THE MILITARY ASSISTANCE PROGRAM (MAP) OR GRANT FUNDS, ARE PLACED IN THE FOREIGN COUNTRY TRUST FUND WHICH IS ADMINISTERED BY THE DSAA, TO BE USED TO FINANCE FMS REQUESTS. SIMILARILY, FOR THE COUNTRIES AUTHORIZED FMS LOANS, WHETHER REPAYMENT IS FORGIVEN, THE INTEREST RATE IS CONCESSIONAL OR THE INTEREST RATE IS AT MARKET RATES, THE LOANS ARE DRAWN DOWN BY DSAA AND PLACED IN THE COUNTRY TRUST FUND TO FINANCE EITHER FMS TRANSACTIONS OR DIRECT COMMERCIAL SALES. NONE OF THESE FUNDS ARE PROVIDED DIRECTLY TO THE COUNTRIES, TO FINANCE THEIR PURCHASES. THE FUNDS ARE ADMINISTERED BY THE DSAA.

ONE BASIC REQUIREMENT OF FMS IS THAT DOD APPROPRIATIONS ARE NOT USED TO SUBSIDIZE THE PROGRAM. THE FMS LOAS PROVIDE A PAYMENT SCHEDULE WHICH REQUIRES A DOWN PAYMENT AND QUARTERLY PROGRESS PAYMENTS. THE SCHEDULE IS STRUCTURED TO ENSURE THAT THE COUNTRIES' FUNDS ARE ON DEPOSIT IN THEIR TRUST FUNDS IN ADVANCE OF DOD REQUIREMENTS TO PAY CONTRACTORS. FURTHER, THE SCHEDULE INCLUDES AN AMOUNT TO FINANCE CONTRACT TERMINATION SHOULD THE COUNTRY ELECT TO CANCEL THE AGREEMENT AFTER ACCEPTANCE.

THE PRICES CITED IN THE LOAS ENSURE THAT ALL DOD COSTS ARE FULLY FINANCED BY THE PURCHASERS. FOR SALES FROM DOD STOCKS, IF THE ITEM WILL NOT BE REPLACED, THE FMS BASE PRICE IS THE ACTUAL COST OF THE ITEM TO THE DOD. IF THE SALE REQUIRES REPLACEMENT OF

STOCKS, THE FMS BASE PRICE IS THE COST OF THE FUTURE REPLACEMENT ITEM. FOR SALES FROM PROCUREMENT, THE FOREIGN CUSTOMER AGREES TO PAY THE FULL AMOUNT OF THE DOD CONTRACT PRICE AND TO MAKE PAYMENTS AS REQUIRED TO MEET DOD CONTRACTUAL REQUIREMENTS. ADDITIONALLY, THE FMS AGREEMENTS INCLUDE CHARGES TO REIMBURSE THE DOD FOR QUALITY ASSURANCE SERVICES, USE OF ANY DOD PLANT EQUIPMENT OR FACILITIES, USE OF MILITARY PERSONNEL, A PRO RATA SHARE OF THE COST OF DEVELOPMENT OF THE ITEM, THE COST OF DOD ADMINISTRATION AND ANY OTHER ANCILLARY SERVICES PROVIDED BY THE DOD SUCH AS PACKAGING OR TRANSPORTATION.

TO IMPLEMENT SUPPLY ACTION, AFTER THE PURCHASER SIGNS THE AGREEMENT AND FULFILLS THE FINANCIAL OBLIGATION, THE AGREEMENT IS PROVIDED TO THE MILITARY DEPARTMENT WHICH MANAGES THE ITEM FOR THE DOD. THE MILITARY DEPARTMENTS PROVIDE FOR THE REQUIREMENTS USING THE NORMAL DEFENSE LOGISTICS SYSTEM. IF THE ITEMS ARE AVAILABLE, OVER AND ABOVE DOD NEEDS, THEY ARE PROVIDED FROM STOCK. IN MOST CASES IT IS NECESSARY TO CONTRACT FOR THE ITEMS. THE MILITARY DEPARTMENTS CONTRACT WITH DOD CONTRACTORS USING THE SAME CONTRACTUAL SYSTEM EMPLOYED WHEN THE DOD CONTRACTS FOR U.S. FORCES. THEY FULLY EMPLOY THE PROVISIONS OF THE COMPETITION IN CONTRACTING ACT AND THE PROVISIONS OF THE DOD SUPPLEMENT TO THE FEDERAL ACQUISITION REGULATION (FAR). TO THE EXTENT POSSIBLE, FOREIGN REQUIREMENTS ARE AMALGAMATED WITH U.S. FORCES REQUIREMENTS TO OBTAIN THE BEST ECONOMY OF SCALE SAVINGS AND TO STABILIZE PRODUCTION LINES.

DURING THE ENTIRE CASE IMPLEMENTATION PHASE, DSAA MONITORS BOTH SUPPLY MANAGEMENT AND FINANCIAL MANAGEMENT ON BOTH A CASE LEVEL AND AT THE OVERALL COUNTRY LEVEL.

SUPPLY AND BILLING ACTIONS ARE MAINTAINED UNTIL THE REQUIREMENTS OF THE LETTER OF OFFER AND ACCEPTANCE ARE FULFILLED. THIS MAY INVOLVE THOUSANDS OF TRANSACTIONS OVER A PERIOD OF SEVERAL YEARS.

AS I INDICATED EARLIER, THE FMS LOANS AUTHORIZED TO SPECIFIED FOREIGN COUNTRIES MAY BE USED TO FINANCE DIRECT COMMERCIAL SALES AS WELL AS GOVERNMENT-TO-GOVERNMENT FOREIGN MILITARY SALES. SINCE THE DOD DOES NOT COMPETE WITH U.S INDUSTRY FOR SALES, IF THE FOREIGN COUNTRY WOULD PREFER TO ENTER INTO A DIRECT COMMERCIAL CONTRACT, ON THE SAME TERMS AND CONDITIONS THE DOD WOULD AGREE TO UNDER FMS, WE NORMALLY WOULD AGREE TO FINANCE THE DIRECT SALE JUST AS WE WOULD AN FMS SALE. WE REQUIRE THAT THE COUNTRY SUBMIT THEIR CONTRACTS TO DSAA FOR REVIEW AND EARMARKING OF LOAN FUNDS. THE DOD, IN 1984, ESTABLISHED GUIDELINES TO ASSURE THAT THE FINANCING IS SIMILAR TO A TRANSACTION UNDER FMS, THAT ALL U.S. LAWS AND POLICIES ARE BEING COMPLIED WITH, AND THAT USG VULNERABILITY TO WASTE, FRAUD AND ABUSE IS REDUCED TO THE LOWEST POSSIBLE LEVELS. OUR REVIEW OF THE CONTRACTS IS CONDUCTED IN CONJUNCTION WITH THE DEPARTMENT OF STATE, COMMERCE AND TREASURY AS APPLICABLE TO DETERMINE THE VALIDITY OF THE TRANSACTION AND THE ELIGIBILITY OF THE INDIVIDUALS INVOLVED IN THE SALE. WHILE THE DOD IS NOT A PARTY

TO SUCH CONTRACTS, WE DO REQUIRE THAT CERTAIN CONDITIONS BE MET AS A CONDITION OF FINANCING. THEY INCLUDE:

- USE OF U.S FIRMS.
- USE OF U.S. ORIGIN COMPONENTS AND SERVICES.
- DISCOURAGING OFFSETS AND NO FINANCING OF DIRECTED OFFSETS (EXCEPT AS AGREED FOR ISRAEL).
- MAXIMUM USE OF COMPETITION AND PURCHASE FROM MANUFACTURERS.
- NO PAYMENTS FOR AGENTS FEES OVER $50,000.
- NO CONTRACTING WITH FIRMS OR INDIVIDUALS DEBARRED OR SUSPENDED FROM USG CONTRACTING.
- RIGHT OF USG ACCESS TO COMPANY BOOKS.
- NO PAYMENTS FOR FREIGHT FORWARDER SERVICES.
- NO PAYMENTS FOR PERSONAL EXPENSES OF FOREIGN REPRESENTATIVES.
- THAT ANY REFUNDS BE IN FAVOR OF THE USG.
- THAT U.S. CARGO PREFERENCE LAWS ARE FOLLOWED.

PRIOR TO 1981 WE RECEIVED RELATIVELY FEW COMMERCIAL CONTRACTS FOR FMS CREDIT FINANCING. THROUGH THE PERIOD OF THE CARTER ADMINISTRATION COMMERCIAL SALES OF DEFENSE ITEMS WERE SEVERELY RESTRICTED. AT THAT TIME THE DOD SERVED PRIMARILY AS THE BANKER, TO FINANCE THOSE CONTRACTS WHICH HAD ALREADY BEEN NEGOTIATED. DURING THE EARLY 1980'S SEVERAL OF THESE COMMERCIAL CONTRACTS WERE DETERMINED BY DSAA TO INVOLVE QUESTIONABLE TRANSACTIONS. THEY WERE TURNED OVER TO OUR INVESTIGATORS, AND,

WHERE CRIMINAL ACTIONS WERE INVOLVED, PROSECUTION WAS SOUGHT THROUGH THE DEPARTMENT OF JUSTICE. AT THAT TIME, AND IN CONJUNCTION WITH THE OVERALL PUSH BY THE SECRETARY OF DEFENSE TO REDUCE DOD VULNERABILITY TO WASTE, FRAUD AND ABUSE, IN CONJUNCTION WITH THE DOD INSPECTOR GENERALS OFFICE, WE ESTABLISHED OUR FINANCING GUIDELINES. THEY HAVE BEEN REVISED AS REQUIRED (AS RECENTLY AS THIS MONTH) TO ASSURE THAT WE HAVE NECESSARY SAFEGUARDS IN PLACE. NOT ALL CONTRACTS SUBMITTED ARE APPROVED FOR FINANCING. SINCE 1984 WE HAVE REFUSED FINANCING ON OVER $70 MILLION WORTH OF CONTRACTS SUBMITTED FOR OUR REVIEW.

SINCE WE HAVE ADOPTED THE GUIDELINES, WHICH HAVE BEEN SOMEWHAT CONTROVERSIAL WITH THE U.S. DEFENSE INDUSTRY AND IN SOME AREAS OF THE CONGRESS, AND SINCE WE HAVE UNDERTAKEN A STRINGENT REVIEW OF THESE CONTRACTS, NO SUCH SIMILAR QUESTIONABLE TRANSACTIONS HAVE BEEN FINANCED TO OUR KNOWLEDGE.

THE DSAA REVIEW FOR FINANCING IS COMPLETELY SEPARATE FROM THE DEPARTMENT OF STATE LICENSING PROCEDURE, WHICH MUST ALSO BE COMPLIED WITH FOR EXPORT OF DEFENSE ARTICLES AND SERVICES.

SINCE THE DEPARTMENT OF DEFENSE ENTERS INTO FMS AGREEMENTS WITH THE DEFENSE MINISTRIES OF FOREIGN GOVERNMENTS, THEY ARE REGARDED AS BINDING INTERNATIONAL AGREEMENTS. AS SUCH, THE COUNTRIES WITH WHOM WE DEAL ARE MAKING NATIONAL COMMITMENTS REGARDING THEIR OBLIGATIONS TO COMPLY WITH THE PROVISIONS OF THESE FMS AGREEMENTS. WE CONTROL THE MATERIEL WHICH IS RELEASED TO THESE COUNTRIES THROUGH OUR CONTRACTS AND LIMITATIONS TO

CONFIGURATION OF SPECIFIC ITEMS. OUR MILITARY DEPARTMENTS PURCHASE THE ITEMS AND QUANTITIES AS SPECIFIED AND AGREED TO IN THE INTERNATIONAL AGREEMENT.

WE ARE CONSTANTLY ON THE ALERT FOR POSSIBLE VIOLATIONS OF THE TERMS AND CONDITIONS OF THESE SALES, ESPECIALLY IMPROPER END USE AND RETRANSFER. WE USE NUMEROUS SOURCES TO MONITOR COMPLIANCE. THEY INCLUDE INFORMATION PROVIDED THROUGH OUR INTELLIGENCE ACTIVITIES AROUND THE WORLD, BY OUR SECURITY ASSISTANCE PERSONNEL IN COUNTRY, BY EMBASSY PERSONNEL, BY OUR ONGOING COUNTRY PROGRAM REVIEWS AND OFFICIAL VISITS, BY OUR INTERACTION WITH OTHER COUNTRIES AND DEFENSE FIRMS.

THE COUNTRIES TO WHICH WE SELL UNDER THE FMS PROGRAM ARE THOROUGHLY FAMILIAR WITH OUR TERMS AND CONDITIONS AND ARE AWARE THAT WE MONITOR COMPLIANCE, REVIEW ALLEGATIONS OF NON-COMPLIANCE AND ENFORCE THE TERMS OF OUR AGREEMENTS. THE COUNTRIES KNOW THAT WE MAY BE REQUIRED BY U.S. LAW, OR WE MAY ELECT, TO CEASE OUR PROGRAMS OF SECURITY COOPERATION WITH THE COUNTRY. THIS LAST COURSE OF ACTION IS VERY DRASTIC AND HAS ONLY BEEN REQUIRED IN LIMITED CIRCUMSTANCES. THE POSSIBILITY OF THIS ACTION IS SUFFICIENT TO ENSURE THAT THE CONTRACT CONDITIONS ARE FOLLOWED. IF THERE ARE ALLEGATIONS OF NON-COMPLIANCE, THE DOD WILL BRING THEM TO THE ATTENTION OF UPPER LEVELS WITHIN THE FOREIGN MINISTRIES OF DEFENSE FOR REVIEW AND CORRECTION. FAILING THIS REMEDY WE MAY REQUEST TO HAVE THE STATE DEPARTMENT USE DIPLOMATIC CHANNELS.

IN VIEW OF OUR CONCERN OVER VIOLATIONS OF THE INTERNATIONAL

TRAFFIC IN ARMS REGULATIONS, WE HAVE SPONSORED LEGISLATION TO INCREASE THE PENALTIES OF SUCH VIOLATIONS. FOR FY 1988 WE HAVE A LEGISLATIVE INITIATIVE TO MAKE ANY FIRM OR PERSON WHO HAS VIOLATED THE ITAR (OR HAS BEEN CONVICTED OR DEBARRED UNDER OTHER CORPORATE NAMES) TO BE INELIGIBLE FOR FMS FINANCING OF ITS DIRECT CONTRACTS. THE US GOVERNMENT WILL CONTINUE TO BE VIGILANT OF SUCH ABUSES AND VIOLATIONS AND WILL TAKE ALL POSSIBLE LEGAL ACTION, INCLUDING CRIMINAL PROSECUTION TO MAINTAIN THE INTEGRITY OF THE PROGRAM AND INSURE AGAINST LOSS.

IN SUMMARY, STATE AND DEFENSE CONDUCT A THOROUGH REVIEW OF EACH PROPOSED TRANSFER OF CONVENTIONAL ARMS UNDER SECURITY ASSISTANCE LAW AND HAVE ESTABLISHED SIGNIFICANT CONTROLS TO ENSURE THAT THE TRANSFERS OF ARMS BY THE U.S. GOVERNMENT FULLY COMPLY WITH LAWS, POLICIES, PROCEDURES AND ESTABLISHED CRITERIA. THESE GOVERNMENT-TO-GOVERNMENT TRANSACTIONS ARE CONTINUALLY MONITORED BY THE DOD AND BY OTHER GOVERNMENTAL ACTIVITIES.

UNDER FMS, SALES CAN ONLY BE MADE TO COUNTRIES DETERMINED BY THE PRESIDENT AND "TO STRENGTHEN THE SECURITY OF THE UNITED STATES AND PROMOTE WORLD PEACE." THEY CAN BE MADE ONLY FOR THE SPECIFIED PURPOSES OF INTERNAL SECURITY, LEGITIMATE SELF-DEFENSE, MILITARY CIVIC ACTION, PARTICIPATION IN REGIONAL OR COLLECTIVE ARRANGEMENTS CONSISTENT WITH THE CHARTER OF THE U.N. OR REQUESTED BY THE U.N. THE PURCHASERS MUST AGREE TO U.S. TERMS WHICH INCLUDES PAYING IN U.S. DOLLARS, MAINTAINING SECURITY AND NOT RETRANSFERRING TITLE OR POSSESSION WITHOUT PRIOR U.S. CONSENT IN

WRITING. IT IS WITH THESE UNDERSTANDINGS THAT SALES ARE MADE, AND THESE CONDITIONS ARE BOTH MONITORED AND ENFORCED BY DEFENSE AND STATE. THE UNITED STATES IS THE ONLY COUNTRY IN THE FREE WORLD THAT PROVIDES A GOVERNMENT SPONSORED AND CONTROLLED PROGRAM FOR MEETING THE DEFENSE NEEDS OF ITS FRIENDS AND ALLIES THROUGH A CAREFULLY REGULATED SALES PROGRAM. TO OUR KNOWLEDGE, IN MOST OF THE REST OF THE FREE WORLD SUCH SALES ARE CONDUCTED SOLELY BY INDUSTRY, WITH FEW CONTROLS OR REGULATIONS.

FMS PROMOTES OUR NATIONAL SECURITY BY ENHANCING LOCAL DEFENSES, MINIMIZING U.S. INVOLVEMENT, SECURING ACCESS ROUTES, ENHANCING U.S. DEFENSIVE CAPABILITIES, ESTABLISHING MILITARY-TO-MILITARY RELATIONSHIPS AND ESTABLISHING U.S. CREDIBILITY, INFLUENCE AND RESOLVE. FROM AN ECONOMIC STANDPOINT IT AIDS IN COUNTERACTING OUR FOREIGN TRADE IMBALANCE, ASSISTS IN MEETING OUR BALANCE OF PAYMENTS, LOWERS COST OF DEFENSE FOR THE U.S. THROUGH ECONOMY OF SCALE ACQUISITION AND PRESENTLY PROVIDES OVER 375,000 U.S. JOBS. SINCE THIS PROGRAM WAS STARTED IN 1949 THERE HAVE BEEN FEW INSTANCES OF MISUSE OF U.S. DEFENSE EQUIPMENT. THE BENEFITS DERIVED FROM THE SECURITY ASSISTANCE PROGRAM FAR SURPASS THE LIMITED RISKS WE ASSUME.

I AM PREPARED TO RESPOND TO YOUR QUESTIONS.

PREPARED STATEMENT OF STEVE WALTON AND SAM BANKS

MR. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE. I AM LEONARD S. WALTON, DIRECTOR OF STRATEGIC INVESTIGATIONS FOR THE U.S. CUSTOMS SERVICE. WITH ME IS SAM BANKS, ASSISTANT COMMISSIONER FOR INSPECTION AND CONTROL.

THE CUSTOMS SERVICE HAS MAJOR RESPONSIBILITIES FOR ENFORCING EXPORT CONTROL LAWS AND REGULATIONS ADMINISTERED BY THE DEPARTMENTS OF STATE AND TREASURY. IT IS MY PURPOSE TODAY TO DISCUSS THE HISTORY OF OUR ENHANCED ENFORCEMENT EFFORTS, OUR LEGAL BASIS FOR OPERATING, AND HOW WE GO ABOUT OUR JOB OF ENFORCING THESE LAWS AND REGULATIONS.

IN 1981 CUSTOMS, UNDER THE DIRECTION OF COMMISSIONER VON RAAB, UNDERTOOK A PROACTIVE INITIATIVE, OPERATION EXODUS, TO INTEGRATE OUR EXPORT ENFORCEMENT EFFORTS. PREVIOUSLY THESE EFFORTS HAD BEEN ENVELOPED INTO THE GENERAL ENFORCEMENT SCHEME OF THE U.S. CUSTOMS SERVICE. HOWEVER, ASSESSMENT OF THE LOSS OF OUR TECHNOLOGY, SPECIFICALLY DUAL USE TECHNOLOGY, LED ADMINISTRATION EXECUTIVES, IN PARTICULAR COMMISSIONER VON RAAB, TO DEVELOP A COMPREHENSIVE PROGRAM WHICH WOULD UTILIZE ALL THE RESOURCES AVAILABLE.

UNDER EXODUS, THE U.S. CUSTOMS SERVICE, WHICH IS CHARGED WITH PRIMARY RESPONSIBILITY FOR ENFORCEMENT OF THE ARMS EXPORT CONTROL ACT (AECA) (22 USC 2778), INVESTIGATION OF MUNITIONS VIOLATIONS HAVE TAKEN A MORE VISIBLE ROLE. THE ACT IS REGULATED BY THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) 22 CFR PARTS 121-130.

THE ITAR IN 22 CFR PART 127.4 (A) AUTHORIZES THE CUSTOMS SERVICE TO "TAKE APPROPRIATE ACTION TO ENSURE OBSERVANCE OF THIS SUBCHAPTER AS TO THE EXPORT OF ANY DEFENSE ARTICLE OR TECHNICAL DATA". THE CUSTOMS SERVICE TAKES THIS DIRECTION SERIOUSLY AND HAS MADE EVERY EFFORT TO ENSURE THAT THE EXPORTATION OF U.S. DEFENSE ARTICLES ARE CONSISTENT WITH LAW AND FOREIGN POLICY.

IN 1986 THE PENALTY FOR VIOLATION OF THE ARMS EXPORT CONTROL ACT WAS INCREASED SO THAT UPON CONVICTION THE OFFENDER IS NOW SUBJECT TO A FINE OF UP TO $1,000,000.00 OR IMPRISONMENT OF UP TO TEN YEARS, OR BOTH. RECENTLY, ON OCTOBER 21, 1986 THE PRESIDENT SIGNED INTO LAW THE ELECTRONICS COMMUNICATIONS PRIVACY ACT OF 1986, WHICH WAS PASSED BY CONGRESS ON OCTOBER 2, 1986. THIS NEW STATUTE GRANTED TO CUSTOMS AUTHORIZATION TO OBTAIN COURT ORDERED INTERCEPTIONS OF WIRE COMMUNICATIONS WHEN IT IS BELIEVED THAT VIOLATIONS OF THE AECA ARE OCCURRING. BOTH THE ENHANCED PENALTY AND THE NEW STATUTE, I BELIEVE, WERE NECESSARY, TO BETTER ENABLE THE CUSTOMS SERVICE TO EFFECTIVELY CARRY OUT ITS MISSION.

SUCCESSFUL EXECUTION OF OUR RESPONSIBILITIES REQUIRES COMPLETE INTEGRATION WITHIN CUSTOMS AND WITH OTHER FEDERAL AGENCIES. WE HAVE ESTABLISHED AT CUSTOMS AN EXODUS COMMAND CENTER TO BETTER COORDINATE THE INVESTIGATIVE ACTIVITIES OF OUR SPECIAL AGENTS AND THE INSPECTIONAL WORK OF OUR UNIFORMED INSPECTORS. I HAVE ASSIGNED A FULL TIME STAFF PERSON TO SERVE AS OUR PERMANENT REPRESENTATIVE AT THE OFFICE OF MUNITIONS CONTROL AND HAVE ALSO DIRECTED A SENIOR MEMBER OF MY STAFF TO SERVE AS LIAISON WITH VARIOUS STATE DEPARTMENT OFFICES INCLUDING THE OFFICE OF THE ASSISTANT SECRETARY OF STATE FOR POLITICO MILITARY AFFAIRS, THE POLICY OVERSIGHT OFFICIAL FOR THE OFFICE OF MUNITIONS CONTROL.

THE INSPECTIONAL ASPECT OF ENFORCEMENT ACTIVITIES MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: PERFORMING DOCUMENT REVIEW AND ANALYSIS: INTENSIVE EXAMINATION/SEARCH OF CARGO, PASSENGERS, AND CARRIERS: DETENTION/SEIZURE OF MERCHANDISE AND CONTRABAND: GATHERING AND DISSEMINATING OF INTELLIGENCE: USE OF AUTOMATED INFORMATION BASE SYSTEMS: AND OTHER ENFORCEMENT ACTIVITIES AS REQUIRED. ACTIVITIES INCLUDE OPERATIONS WITHIN EMBARKATION/DEBARKATION AREAS, VISITS TO FREIGHT FORWARDERS, MANUFACTURERS AND OTHER MEMBERS OF THE EXPORTING COMMUNITY AS REQUIRED. IN ORDER TO ACCOMPLISH THE MISSION OF OPERATION EXODUS, TEAM MEMBERS MAINTAIN NECESSARY CONTACTS AND LIAISON WITH OTHER AGENCIES AT THE FEDERAL, STATE AND LOCAL LEVEL, INCIDENTAL TO INSPECTIONAL FUNCTIONS.

INSPECTORS ASSIGNED TO EXODUS TEAMS ARE DEDICATED EXCLUSIVELY TO EXPORT ENFORCEMENT ACTIVITIES. IN CASES OF EXTREME CIRCUMSTANCES, EXODUS INSPECTORS MAY BE UTILIZED FOR OTHER ENFORCEMENT ACTIVITIES, ONLY AFTER ALL OTHER AVAILABLE RESOURCES HAVE BEEN EXHAUSTED.

SIXTY-FOUR FULL-TIME INSPECTIONAL POSITIONS HAVE BEEN ALLOCATED AT A TOTAL OF 27 PORTS THROUGHOUT THE COUNTRY AND FUNDED AT THE NATIONAL LEVEL. ADDITIONAL POSITIONS MAY BE DESIGNATED BY LOCAL MANAGEMENT AS NEEDED TO ACCOMPLISH THE GOALS OF THIS PROGRAM.

GENERALLY INSPECTORS ARE UNIFORMED, HOWEVER THERE ARE OCCASIONS WHEN PLAIN CLOTHES ATTIRE PROVIDES MORE EFFECTIVE PERFORMANCE. SPECIFIC NON-UNFORMED ASSIGNMENTS CAN ONLY BE AUTHORIZED BY LOCAL MANAGEMENT OFFICIALS.

DURING THE COURSE OF CONDUCTING EXODUS ACTIVITIES, INSPECTORS WILL REVIEW AND PROFILE EXPORT DOCUMENTATION IN ADDITION TO EXAMINING THE CARGO FOR COMPLIANCE AND VERIFICATION.

PERSONS WHO MANUFACTURE OR EXPORT MUNITIONS MUST REGISTER WITH THE DEPARTMENT OF STATE, OFFICE OF MUNITIONS CONTROL. IN ADDITION, ANY ENTITY INTENDING TO COMMERCIALLY EXPORT A DEFENSE ARTICLE OR TECHNICAL DATA MUST OBTAIN A LICENSE FROM THE STATE DEPARTMENT, OFFICE OF MUNITIONS CONTROL. THESE PERSONS FILE AN

APPLICATION FOR AN EXPORT LICENSE WHICH INCLUDES DATA IDENTIFYING THE COUNTRY OF ULTIMATE DESTINATION, THE COMMODITY, MANUFACTURER OF THE COMMODITY; NAME AND ADDRESS OF THE SELLER IN THE U.S.; NAME AND ADDRESS OF THE FOREIGN CONSIGNEE, NAME AND ADDRESS OF THE FOREIGN END USER; AND, THE SPECIFIC PURPOSE FOR WHICH THE MATERIAL IS REQUESTED.

THE COUNTRY DESIGNATED AS THE COUNTRY OF ULTIMATE DESTINATION ON AN APPLICATION FOR AN EXPORT LICENSE MUST BE THE COUNTRY OF ULTIMATE END USE. THE WRITTEN APPROVAL OF THE DEPARTMENT OF STATE MUST BE OBTAINED BEFORE RESELLING, DIVERTING, TRANSFERRING, TRANSSHIPPING, OR DISPOSING OF A DEFENSE ARTICLE IN ANY COUNTRY OTHER THAN THE COUNTRY OF ULTIMATE DESTINATION.

RECIPIENTS OF AN EXPORT LICENSE MUST DEPOSIT THE LICENSE WITH THE DISTRICT DIRECTOR OF CUSTOMS AT THE PORT OF EXIT BEFORE SHIPPING THE MUNITIONS LIST ITEMS. BEFORE SHIPPING ANY DEFENSE ARTICLE, THE EXPORTER MUST ALSO FILE A SHIPPER'S EXPORT DECLARATION WITH THE DISTRICT DIRECTOR OF CUSTOMS AT THE PORT OF EXIT.

THIS DATA, COUPLED WITH CUSTOMS ON SITE PRESENCE AT THE OFFICE OF MUNITIONS CONTROL ENABLES CUSTOMS TO EXPEDITIOUSLY VERIFY THE BONA FIDES OF A PROPOSED TRANSACTION. FOR EXAMPLE, A CUSTOMS INSPECTOR REVIEWING A CONSIGNMENT DECLARED FOR EXPORT CAN TELEPHONE THE EXODUS COMMAND CENTER, AND, IN SOME INSTANCES, WITHIN IN A MATTER OF HOURS, BE INFORMED IF THE MATERIAL REQUIRES A LICENSE; IF LICENSE IS REQUIRED IF ONE IS EXTANT; AND, IF THE

COMMODITY SHOULD BE PERMITTED TO PROCEED. THIS TIMELY INTERACTION BETWEEN AGENCIES PERMITS CUSTOMS TO INTERDICT THOSE SHIPMENTS THAT SHOULD NOT PROCEED AND INITIATE THE REQUISITE INVESTIGATIONS.

SINCE 1981 THE CUSTOMS SERVICE HAS MAINTAINED SEPARATE RECORDS RELATIVE TO SEIZURES AND PROSECUTIONS FOR OFFENSES OF THE ARMS EXPORT CONTROL ACT. THESE STATISTICS ARE AS FOLLOWS.

	FY84	FY85
ARRESTS	53%	70%
INDICTMENTS	46%	44%
CONVICTIONS	67%	59%

IF A SHIPMENT IS ENCOUNTERED WHICH IS SUSPECTED OF NEEDING AN EXPORT LICENSE, THE SHIPMENT IS DETAINED. (THE INSPECTOR USES THE INTELLIGENCE INDICES AVAILABLE TO HIM TO JUSTIFY HIS DECISION TO DETAIN THE MERCHANDISE.) A WARNING LABEL IS PLACED ON THE SHIPMENT AND THE NOTIFICATION PROCESS IS INITIATED.

FOR THIS PURPOSE, A DUAL NOTIFICATION SYSTEM IS USED. A VERBAL NOTIFICATION IS GIVEN TO THE CARRIER AND THE EXPORTER, OR HIS AGENT. THIS IS FOLLOWED BY WRITTEN NOTIFICATION TO THE EXPORTER, OR HIS AGENT.

THE INSPECTOR IMMEDIATELY NOTIFIES THE EXODUS COMMAND CENTER AND REFERS ALL PERTINENT INFORMATION RELATED TO THE SHIPMENT.

THIS INFORMATION IS REFERRED TO THE APPROPRIATE LICENSING AGENCY FOR A DETERMINATION. IF SPECIFICATIONS ARE REQUIRED, THEY ARE REQUESTED AND REFERRED TO THAT AGENCY TO ASSIST IN A DETERMINATION.

IF A LICENSE IS REQUIRED, THE SHIPMENT IS SEIZED. THE MERCHANDISE IS RELEASED IF A LICENSE IS NOT REQUIRED.

THERE ARE UNFORTUNATELY SEVERAL METHODS EMPLOYED BY WHICH U.S. MUNITIONS LIST ITEMS ARE ILLEGALLY OBTAINED AND EXPORTED. IN GENERAL TERMS I WILL EXPLAIN THE PRIMARY METHODS AND GIVE EXAMPLES OF EACH.

THE FIRST AND MOST COMMON METHOD BY WHICH MUNITIONS LIST ITEMS ARE ILLEGALLY OBTAINED AND EXPORTED IS THROUGH THE USE OF A FALSE END-USER WHEN APPLYING FOR AN EXPORT LICENSE. THE LISTED END-USER IS IN FACT JUST AN INTERMEDIARY WHO WILL DIVERT OR FORWARD THE ITEMS TO THE TRUE END-USER ONCE THE GOODS HAVE BEEN EXPORTED. THIS METHOD CAN BE UTILIZED BOTH WITH OR WITHOUT THE KNOWLEDGE OF THE U.S. EXPORTER. IN MANY INSTANCES THE U.S. EXPORTER SHIPS THE GOODS BELIEVING THAT THE LISTED END-USER IS A LEGITIMATE CUSTOMER. IN OTHER INSTANCES THE U.S. EXPORTER KNOWINGLY PROVIDES FALSE INFORMATION EITHER ON THE EXPORT LICENSE APPLICATION BY LISTING A FALSE END-USER OR BY MISIDENTIFYING THE

COMMODITY. THE SUBSEQUENT SALE OR DIVERSION OF THE GOODS IS ILLEGAL. HOWEVER, ENFORCEMENT OF THESE VIOLATIONS IS DIFFICULT SINCE THEY ARE EXTRATERRITORIAL BECAUSE OF NATURE OF THE TRANSACTIONS.

A PRIME EXAMPLE OF THIS METHOD IS A RECENT U.S. CUSTOMS INVESTIGATION CONCERNING THE DIVERSION OF TWO LOCKHEED HERCULES L-100-30 AIRCRAFT AND SPARE PARTS TO THE GOVERNMENT OF LIBYA. IN THIS CASE THE AIRCRAFT, HAVING BOTH A COMMERICAL AND MILITARY VERSION, WERE ACQUIRED FROM LOCKHEED BY U.S. PERSONS WHO INDICATED THAT THE AIRCRAFT WERE TO BE USED FOR COMMERCIAL CARGO OPERATIONS IN BENIN. THE TRUTH WAS THAT THE GOVERNMENT OF LIBYA, WORKING WITH THESE MERCHANTS OF DEATH, DEVELOPED A SCENARIO WHEREBY THEY COULD ACQUIRE AIRCRAFT, WHICH WHEN SIMPLY MODIFIED FIT THEIR MILITARY REQUIREMENTS. THIS SCHEME REQUIRED THAT THE COMMERICIAL VERSION BE PURCHASED AND EXPORTED TO BENIN, A TRANSACTION WHICH DID NOT REQUIRE LICENSE, AND THEN BE DIVERTED TO LIBYA.

THE SECOND METHOD OF DIVERSION OR ACQUISITION IS THE ILLEGAL RE-SALE OF U.S. MUNITIONS LIST ITEMS WHICH WERE ORIGINALLY LEGALLY PURCHASED UNDER THE FOREIGN MILITARY SALES PROGRAM. IN THESE INSTANCES, FOREIGN GOVERNMENTS RE-SELL U.S. MADE ITEMS TO UNAUTHORIZED NATIONS OR GROUPS WITHOUT THE REQUIRED PRIOR APPROVAL OF THE U.S. GOVERNMENT/STATE DEPARTMENT.

ANOTHER CLASSIC SCHEME IS TO EXPORT BY MISIDENTIFYING THE COMMODITY AS SOMETHING OTHER THAN WHAT IT ACTUALLY IS. FOR INSTANCE, AIRCRAFT SPARE PARTS WHICH REQUIRE LICENSE ARE IDENTIFIED WHEN EXPORTED AS MACHINERY OR AUTO SPARE PARTS. THIS IS POSSIBLE SINCE THERE IS NO CONTROL OVER THE DOMESTIC PURCHASE OF THE ITEM. THE DOMESTIC PURCHASER THEN EXPORTS THE ITEM BY MISDECLARING ITS VALUE AND ITS DESCRIPTION. PRIME EXAMPLES OF THIS ARE THE RECENTLY COMPLETED INVESTIGATIONS INTO THE PURCHASE OF KRYTONS, NUCLEAR TRIGGERING DEVICES, BY AN INDIVIDUAL WHO INTENDED TO ILLEGALLY EXPORT THEM TO PAKISTAN. IN ANOTHER INSTANCE, A GROUP WERE STEALING SPARE PARTS FOR THE F-14 AIRCRAFT FROM THE NAVY, MISLABELING THEM AS AUTO PARTS AND THEN EXPORTING THEM WITHOUT A LICENSE TO THE UNITED KINGDOM. SHIPPING DOCUMENTS REFLECTED THAT THE COMMODITIES WERE VALUED AT LESS THAN $500.00 AND WERE IDENTIFIED AS AUTO PARTS/MACHINERY.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE.

ASSOCIATE COMMISSIONER
WASHINGTON

APR 10 1987

Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Please find attached the responses to the follow-up questions posed by Senator Pryor which will be incorporated into the record of February 20, 1987, of the Senate Governmental Affairs Committee at which Customs testified. A duplicate of this document has been forwarded directly to the Senator.

If you have any questions, please do not hesitate to contact me at 566-9102.

Sincerely,

Charles R. Parkinson
Congressional and Public Affairs

QUESTION: Does Customs refer any cases of violations to the Office of Munitions Control for administrative action? Are you satisfied with the response?

RESPONSE: Customs does not refer any cases of violations of the export control laws to the Office of Munitions Control (OMC) for administrative action. Pursuant to the authority delegated to Customs to enforce the export control laws by title 22, United States Code, section 401, and the International Traffic in Arms Regulations by title 22, Code of Federal Regulations, section 127.4, the administrative decision made in respect to a violation of these laws and regulations is within the jurisdiction of the Customs Service. Customs does, however, request the recommendation of OMC as to mitigation of the liabilities incurred by the violator when the domestic value of the export-controlled merchandise under seizure exceeds $100,000 or when the facts of the case warrant our coordinating the mitigation decision with OMC. Although we are under no obligation to accept OMC's recommendation, we have found that it generally is in accord with our decision in the case, which is based upon our guidelines for mitigation of export violations.

QUESTION: How much of the illegal international arms trade do you think Customs is able to stop? Do you have any estimate of the magnitude of the illegal arms flow from the U.S.?

RESPONSE: It is impossible to estimate the amount of illegal international arms trade that Customs is able to stop. Data relevant to illegal international arms trade is classified and resides within the Department of Defense. We would refer you to DOD for further clarification. If we look at Customs munitions seizures and prosecutions for munitions items, the flow seems substantial.

Looking at FY 86, the Customs Service has interdicted a total of 397 Office of Munitions Control seizures with a value of $34,459,397. To date, there have been 89 prosecutions of 207 individuals and 44 companies for significant fraudulent acquisition and illegal export of arms, ammunition and military equipment. We believe that the threat is significant based on our record of seizures and prosecutions. However, to speculate on Customs impact on the illegal international arms trade is next to impossible. An estimate of 36 billion dollars including undeclared shipments for the total international arms trade for 1984 is the most recent figure used when discussing the magnitude of the market. Customs has no information as to the percentage of this total figure of U.S. munitions items, the ratio of legal-illegal shipments, and the quantity leaving from U.S. borders rather than from overseas. Therefore, it makes it very difficult to determine the magnitude of the flow from the U.S., let alone arrive at a figure showing Customs impact on U.S. illegal arms trade.

QUESTION: Total Munitions List seizure statistics show a large variance from year to year. To what do you attribute this variance? Do seizure rates vary by ports?

RESPONSE: A number of variables have led to what, at least superficially, looks like a large variance in seizure activity. First, although total OMC seizure has varied, these seizures when expressed as a percentage of all EXODUS seizures did not vary dramatically until FY 86. To illustrate:

Time Period	OMC Seizures	All Seizures	% OMC
82	79	794	10
83	314	1,444	22
84	274	1,458	19
85	137	755	18
86	397	806	49

Second, it appears that the sharp rise in FY 86 relates to an increasing volume of munitions shipments plus a more aggressive enforcement posture by Customs in interdicting in-transit and failure to authenticate violations. Although these violations are technical in nature, they are violative of the ITAR and grounds for seizure under 22 CFR 127.5. Third, voluntary compliance by exporters has increased over the period EXODUS has been in operation but based on FY 86 results and partial FY 87 results may be on the decrease as volumes of shipments rise.

Seizures do vary by port with the bulk of seizures occurring at major gateways such as JFK and LAX. We do not have readily available a breakdown of activity such as the one above on a port by port basis.

QUESTION: What percentage of OMC seizures are returned to the exporter without further action? What percentage go to prosecution?

RESPONSE: We have no data as to the actual percentage of seizures which are returned without action or which are referred for prosecution. We can state with certainty, however, that only a small portion of OMC seizures are referred for prosecution or are returned to the exported without further action, i.e. the forfeiture is remitted in full and without payment of any penalty amount. The cases in which the latter disposition would occur are limited to the following situations:

1. The merchandise is the property of NATO, it is covered by a valid license and all requirements for processing an export under a license (e.g., having a complete and correct Shipper's Export Declaration) have been fulfilled; and

2. The merchandise was sold by the U.S. to a foreign government under the Foreign Military Sales (FMS) program and OMC confirms that a valid license had been applied for and had been issued or was about to be issued at the time Customs discovered the violation.

The percentage of OMC seizures resulting in criminal prosecution of the exporters has been decreasing since the inception of the Exodus program. Today, a very small percentage of "cold" seizures result in criminal prosecution. The percentage has decreased as potential violators have realized the increased risk of detection by Customs Inspectors. Due to the initial success of the outbound cargo inspection program, violators are now utilizing new methods that will ensure less risk that the exported item will be detained or seized. An example of these methods is use of false-end use certificates to obtain export licenses, and diversion of shipments after they have legitimately left the United States. To Customs Inspectors examining these shipments, all the paperwork is in order and the shipment appears legitimate. In response to this change, Customs has taken a more proactive stance regarding illegal export investigations. This has resulted in a higher number of prosecuted cases and convictions even with a smaller percentage of "cold seizures" resulting in prosecution.

QUESTION: How many class I investigations of AECA violations are ongoing at this time? How many were initiated and completed in FY 86? Is this an increase or decrease?

RESPONSE: There are currently 1,180 ongoing class I investigations at this time. During FY 86 629 case were initiated and 490 were completed. This an increase over FY 85 in which 482 were initiated and 245 were completed.

QUESTION: Can you estimate the percentage of cargos that receive an actual physical inspection by Customs? Has Customs cut back on the number or certain types of outbound flight cargo inspections since 1980? Has the number of inspectors decreased since 1980? If so, by how much?

RESPONSE: Customs does not keep statistics on the number of outbound inspections and therefore is unable to estimate the percentage of inspections made. With the advent of EXODUS in 1981 which eventually committed 104 field inspectors to the program, it is believed the number of such outbound inspections increased dramatically. During FY 84, the dedicated EXODUS field inspector positions was cut back by 40 to the present 64 positions.

Although information on the number of outbound inspections is ot available, Customs required that, effective January 7, 1985, SED's for all licensable cargo be presented to Customs prior to export. In this way, Customs is able to utilize enforcement profiling techniques on export documentation for licensable shipments. Based on the results of such profiling, a decision is made on the extent of a physical inspection, if any.

QUESTION: How often have your investigations uncovered illegal re-transfers or diversions of arms licensed by the State Department or sold in the FMS program? What happens when end use violations are identified? How could the Government's response to violations be improved? Please provide a list of suspected and confirmed illegal arms re-transfers since 1980 with your response.

RESPONSE: Neither the Department of Defense nor State, as the agencies responsible for administering the FMS program and licensing arms sales, maintain computerized information regarding the issuance of licenses or other information concerning illegal re-transfers or diversions of arms. This information can be obtained through a time-consuming manual search of their files, which impedes our ability as an enforcement agency to timely respond to violations and identify potential violators. Increased controls on the documentation to support re-transfers of arms would enhance our ability to establish a paper trail to the actual end users. From an investigative standpoint this trail is critical to substantiating the violation.

QUESTION: What are the top ten country destinations for recurrent illegal arms shipments.

RESPONSE: A review of the Department of Justice listing of Significant Export Control Cases established the below listed countries as the most frequent destinations for illegal shipments of U.S. Munitions List items.

1. Iran
2. South Africa
3. Libya
4. Chile
5. Soviet Union
6. Republic of Ireland
7. Iraq
8. Philippines

Based on this listing the 9th and 10th most frequent destinations for illegal shipments were tied among Nicaragua, Peoples Republic of China, Japan, North Korea, Syria, Argentina and Israel.

QUESTION: Are licensed arms exports to any countries exempted from inspection or any aspect of normal inspections?

RESPONSE: Outbound inspections are conducted to determine whether or not a shipment is in compliance with applicable laws and regulations. As a result, all shipments are subject to such inspections. However, for shipments to such countries as Canada, where very few shipments would require any type of license, the number of inspections would be much lower than when compared to a Warsaw Bloc country where most shipments would require a license. When an inspection is performed, the focus is not merely on munitions, but also includes looking for technology, currency, and other merchandise subject to export controls e.g. agricultural products, narcotics, etc.

QUESTION: How much of the illegal arms trade seems related to drug traffic or terrorist groups?

RESPONSE: Despite allegations and assertions that there is a definite connection between illegal arms trade and drug trafficking and/or terrorist groups, Customs has no evidence to support these allegations. If we further define the above statement as follows: "A connection will occur where there is a systematic approach to doing business that would include both activities of drug trafficking and illegal arms trading within the same organization/corporation, and whose motivation is to make a profit," these linkages do not exist. There has been one specific instance of an organization involved in both illegal arms and drug trafficking, KINTEX-the Bulgarian Foreign Trade organization, but it is the exception rather than the rule. The same is true of terrorist groups. They may be involved with illegal arms activities as a means to an end. Their actions are not confined to buying and selling arms within a structure whose ultimate goal is to make a profit, but to use the arms obtained to reach a political goal of revolution/overthrow of the State.

QUESTION: What does the Customs inspector at the dock or airport have ready access to that helps him to identify illegal arms shipments? Are you satisfied with the quality and timeliness of OMC responses to requests for assistance? How could the process of responses be improved? Is there a direct link with technical experts at the Defense Department? Are you satisfied with the quality and timeliness of DOD's response?

RESPONSE: The basic tool the inspector uses is the U.S. Munitions List which is contained in 22 CFR Part 121. Additionally, inspectors have access to reports and alerts disseminated by the Office of Intelligence in Customs as well as to the Treasury Enforcement Communications Systems (TECS) which contains information on prior violators. Finally, the inspector can contact the EXODUS Command Center to query the existence of a license, to request a license determination, and/or obtain additional information about an export or item being exported.

OMC responses to requests for assistance from the Customs Service have generally been excellent in quality and handled in a timely manner. We believe that the automation of OMC licensing data could improve these responses and assist in maximizing the efficient use of resources from within Customs and OMC. For example, we need the ability to query the export licensing histories of the ultimate end users listed on the export license applications.

Technical experts from the Department of Defense have always been available to assist Customs export control enforcement efforts, since the inception of Operation EXODUS. Their expertise has been most valuable and has been consistently thorough and timely in every occasion.

QUESTION: How are inspectors kept apprised of intelligence reports on suspect companies, freight forwarders, destination of items? How often are inspectors given up-dates?

RESPONSE: Customs Office of Intelligence disseminates intelligence reports/alerts to various field entities including Regional Intelligence Branches (RIB). As required, RIB's pass intelligence on to EXODUS teams. This process is continuous in nature and allows the inspector to be kept as up-to-date as possible. Additionally, local RIB's conduct threat assessments and studies to identify trends in particular ports and relay the results to the EXODUS team as necessary. Finally, on a monthly basis, lists of all EXODUS seizures are disseminated which breakdown seizures in seven ways: by port, destination, date of seizure, consignee, exporter, carrier, and item seized.

QUESTION: To what extent is it likely that commodities subject to State Department control are being shipped under Commerce regulation without a valid State Department license? Is there a need for a clearer delineation of items subject to State Department control?

RESPONSE: Commodities subject to State Department control being shipped under Commerce regulation absent a valid State Department license have been detected by the Customs Service. In some instances this is because of confusion on the part of the exporter, in other instances it is a deliberate attempt on behalf of the exporter to avoid the licensing requirements. The deliberate attempts to illegally export these items are accomplished through misdescriptions, mislabeling and incomplete data being supplied to the licensing entity (Department of Commerce). This method of operation is further aided by the inability of the licensing agency to verify the description provided against the actual item being exported. The number of exports fitting this situation is decreasing as the exporting community becomes more knowledgeable and the Customs Service detects improper shipments before they are actually exported.

The Customs Service feels that the U.S. Munitions list accurately describes and delineates the items subject to State Department control.

QUESTION: How has the number of Operation Exodus personnel or the number of ports covered by Exodus personnel changed from year to year since 1981.

RESPONSE: In 1981 Operation Exodus had 144 Inspectors assigned in 39 ports throughout the country. In FY 1984 the number of Inspectors was reduced to 64 at 27 ports. The Office of Enforcement does not have a specific dedicated number of Agents assigned to Operation Exodus. There are currently 55 Agents around the United States who are port coordinators responsible for enforcement activity within their respective ports. In addition to these coordinators, the number of agents assigned to conduct Strategic Investigations (AECA/EAA) is dictated by activity and case load in each specific port. The Customs Service views the Exodus program as a priority program and as such, strategic investigations are assigned a sufficient number of agents to successfully achieve the goals of the program. As with other priority programs within the Customs Service, if extenuating circumstances require the assignment of additional personnel for specific investigations or tasks, it is done by the local field managers.

QUESTION: Are dedicated EXODUS staff being or have been pulled off EXODUS duties for other tasks? If so, how often and for what purpose?

RESPONSE: National guidelines for Operation EXODUS mandate that personnel assigned to EXODUS teams be dedicated exclusively to export enforcement activities. In cases of extreme circumstances, EXODUS personnel may be utilized for other enforcement activities, but only after all other available resources have been exhausted. Typically, especially in some of our smaller ports, emergencies arise necessitating the use of EXODUS personnel for non-export enforcement e.g. drug seizures, surveillances, controlled deliveries, etc. However, we have found just as often that the amount of time lost to EXODUS is more than made up by participation in EXODUS activities by non-EXODUS personnel.

QUESTION: What specific training do Exodus and non-Exodus personnel receive related to munitions exports?

RESPONSE: Considerable training hours are expended in formal schools regarding munitions exports for Exodus and non-Exodus personnel. Special Agents, Customs Investigators, Customs Inspectors, Intelligence personnel, Customs Attaches and Customs Representatives, and other enforcement officers receive training in the Basic Special Agent School; Customs Basic Investigator School; Intelligence schools, Custom Inspector School, supervisory, mid-level, management schools, as well as frequent organized OJT by field Exodus coordinators training Exodus and non-Exodus personnel throughout the Customs regions.

The training consists of formal classroom lectures, practical exercises, frequent field OJT, training seminars and conferences. Subjects such as Arms Export Control Act, ITAR, export licensing, and OMC are matters taught. There is always a strong formal presentation by U.S. Customs staff Attorneys, usually a representative of the Office of Chief Counsel or Regional Counsel in the formal classroom training periods. Customs attorneys' presentations would include such subjects as arrest authority, search and seizure laws, extraterritoriality, precedent court cases, and other legal authorities.

It would be short sighted to say that a particular number of hours are dedicated to munitions export. The terminal performance objective(s) of Office of Enforcement schools is to educate special agents, investigators and OE personnel to be able to perform in an effective manner in significant criminal and civil investigations culminating in a prosecution or appropriate resolution for the U.S. Government. Therefore, the training received is a balanced training program, which is appropriately weaved for the officers to perform and handle munitions export cases and related matters. Courses, such as technical and electronic surveillance, development and payment of informants, courtroom and grand jury procedures, undercover operations, and other investigative disciplines which are not "export munitions" per se are included in the curriculum. The entire training objective is considered.

All Office of Intelligence personnel receive training on all aspects of Customs responsibilities, including the laws enforced and the various interests of field personnel in regard to enforcing these laws. Those analysts assigned to the EXODUS program usually participate in the seminar on EXODUS presented by the Office of Inspection and Control. Also, when seminars in the Washington area are given which discuss munitions licensing, analysts are encouraged to attend.

Customs regional fines and penalties personnel (all of whom are involved in the Exodus program) attend periodic seminars at the Customs training facility at Glynco in Georgia. At these seminars Customs Headquarters personnel update the substantive and procedural changes in the Exodus program for the benefit of the regional offices. Customs Exodus and non-Exodus personnel also attend regional seminars at which the Exodus program is discussed by Headquarters personnel.

QUESTION: To what extent does Operation Exodus provide ongoing guidance and procedures relating to illegal arms exports to staff working in the Exodus program? How often do you up-date your guidance to provide a coordinated approach to commonly identified problem areas.

RESPONSE: The nature of Operation Exodus and investigations of illegal arms exports dictates that guidance to field elements be updated on a continual basis. Headquarters elements continually comprise the field of such things as: (a) "wish lists" for proscribed countries, (b) changes in legislation and related authories, (c) new investigative techniques, (d) techniques utilized in violating the Arms Export Control Act, (e) cooperation with foreign governments, (f) legal and administrative problems and how to avoid them and, (g) technical guidance on particular items controlled by the Arms Export Control Act.

In addition, the Exodus Command Center at headquarters continually assists Inspectors and Agents in the field concerning license determinations, license histories, embargo/sanction enforcement and various other areas.

Also, headquarters periodically has an Exodus conference for field personnel in which all of the above issues are discussed. Representatives from various agencies (ie; Department of Justice, OMC, Department of Defense) also attend this conference.

Guidance and procedures are continually updated as new information is received which impacts on the successful interdiction of illegal arms exports. Customs actively exploits all available resources to derive usable, timely information for Customs field personnel. The Customs Office of Intelligence routinely provides the following data:

1. Administrative and alert messages describing procedural changes and/or alleged illegal activities are disseminated Customs-wide through the Treasury Enforcement Communications System (TECS) to all EXODUS personnel. This reporting may describe changes in laws, suspect individuals/activities, or specific country shopping lists.

2. Another technique is the Intelligence Report which is used for assessments of specific munitions item, country studies and trend analysis in munitions seizures over a specific period of time.

3. Another regular product is our EXODUS seizure statistics which are produced monthly and yearly. They describe seizures by port, Customs region, commodity, exporter, carrier, date of seizure, etc. These reports help to pinpoint problem areas so that we can direct our resources to eliminate the problem.

4. Additionally, technical reference handbooks are being developed to provide a ready guide on price, manufacturer, model numbers and photos of specific munitions equipment considered to be of critical importance. They have been disseminated to the EXODUS ports and are being updated on a continuous basis.

Ongoing guidance is provided to field staff through periodic seminars and Exodus conferences. To update our guidance, the Miscellaneous Penalties Branch often issues telexes to all field offices, to clarify existing Exodus policy or procedures. In addition, the Miscellaneous Penalties Branch on a daily basis responds to telephonic requests from field offices seeking assistance in administering the Exodus program.

QUESTION: In discussing Operation Exodus in a 1985 hearing before the Senate Finance Committee, plans were discussed for "an expanded munitions control program... in FY 86". What were the elements of that expansion?

RESPONSE: The Customs Service enhanced and expanded its munitions control program during FY 86 as detailed below.

1. Operation RETREAD - The Customs Service joined in a joint program with the Department of Defense in an attempt to identify and target illegal activity associated with the Defense Reutilization and Marketing Service (DRMS). DRMS is a military entity functioning as the marketing organization for the Army, Air Force and Navy. DRMS sell surplus military items on the open market at designated locations both within and outside the U.S. A copy of the findings of Operation Retread have been supplied in response to another question.

2. The Customs Service has increased and refined its informant development program through use of the GEMINI program which is aimed at educating the exporting public about what to look for regarding illegal export of munitions and high technology.

3. The Customs Service has increased liaison and coordination with the intelligence community in order to obtain actionable information for investigative purposes. This action has resulted in increased cooperation and an increased flow of information to and from the various intelligence agencies.

4. The Customs Service has continually encouraged legislative initiative aimed at strengthening the Arms Export Control Act and related authorities. In FY 86, several successes in this area were achieved. As part of the Electronic Communications Privacy Act of 1986, violations of the Arms Export Control Act were added to 18 USC 2516 as a predicate offense for the interception of wire or oral communications. Furthermore, money laundering in connection with or in furtherance of violations of the Arms Export Control Act became a codified violation under the Anti-Drug Abuse Act of 1986. Also, penalties for violations of the Arms Export Control Act have been increased from 2 years incarceration/$50,000 fine to 10 years incarceration/$1,000,000 fine.

5. The Customs Service has refined its use of undercover operations in order to target higher level violators of the Arms Export Control Act. Based on an ever growing expertise in this field the Customs Service has been able to utilize its covert operations to disrupt conspiracies before harm can be done to national security. The Customs Service has gradually shifted from the reactive approach to the much more effective proactive stance.

6. Increased foreign cooperation during FY 86 also significantly increased the effectiveness of Customs' munitions control program. This was achieved through the addition of several Customs Attaches offices overseas as well as bilateral agreements with other nations.

7. With respect to seizures for violations of the International Traffic in Arms Regulations, which involve the Office of Munitions Control (OMC) and are administered by the Miscellaneous Penalties Branch, we have noticed that the number of such seizures made after the munitions have been exported from the U.S. or upon their temporary importation or in-transit movement through the U.S. has increased. In these instances the Customs inspector examining the export or import documents discovers that the exported shipment was not validated against the OMC license, or that the shipment being temporarily imported or moving in-transit does not contain the requisite DSP-61 license.

QUESTION: Has the Customs Office of Enforcement or Office of Inspection and Control solicited feedback from its agent and inspectors concerning problems in enforcing munitions export regulations? If so, when was it solicited and what did you find?

RESPONSE: Yes. This is a continuing process, consequently the program and management of the program is being continually adjusted to meet the needs of field elements involved in the program.

QUESTION: Please identify arms export inspections, investigations, or prosecutions referred to the Justice Department that have been the subject of intervention by other government agencies since 1981. Please provide the names of arms exporters who have been granted any special treatment or protection due to such intervention since 1981. Have there been any instances in which OMC or DSAA have intervened on behalf of a suspect arms export?

RESPONSE: In our enforcement capacity, the Customs Service continuously maintains contact with various federal agencies responsible for administering the arms export control laws. These other agency contacts can include some forms of direct intervention (i.e., (1) recommendation regarding disposition of a violation; (2) retroactive license approvals; (3) waiver of certain documentary requirements, etc.) that may impact an investigation or prosecution. While we have these contacts on a regular basis, we are unaware of any instance in which a Customs arms export inspection or investigation has been terminated at the request of another federal agency. With respect to intervention in the prosecutions of arms export violations, this is an area that would more appropriately be within the knowledge of the Justice Department.

QUESTION: Do exports to certain countries receive special scrutiny to detect illegal arms shipments? Is a list maintained of such countries? If so, please provide the list with your response.

RESPONSE: Inspectors are kept apprised of high-risk diversion and destination countries on a continuous basis through intelligence resources by way of special reports, alerts, and updates to the TECS database. Additionally, the monthly listing of EXODUS seizures includes a breakdown by destination.

QUESTION: Does Customs maintain and do inspectors utilize lists of arms exporters who are high risk, under investigation for illegal exportation, or who have a record of illegal activities? If so, please lists with your response.

RESPONSE: The Treasury Enforcement Communications System (TECS) is a computerized data base that Customs inspectors and Office of Enforcement personnel use as a mechanism by which they may obtain information regarding a particular exporter and the record of previous exports. Information derived from this system is often used to target potential violators, to substantiate investigative information and develop investigative leads. In response to your request, we do not, per se, maintain a "list" of exporters who are high risk, under investigation or have records of illegal activities, but rather rely on TECS for this purpose. We can by the name of the exporter query the TECS system to determine whether an exporter has any previous violations. In addition, we can program the system to identify by case category those cases, which involve alleged violations of the Arms Export Control Act and of the suspects and associates in these cases; however, the list would have to be manually prepared from an examination of these files.

Please find attached a copy of the Operation Retread report that you requested. Please note that we have deleted the identities of some of the referenced parties as there are active investigations ongoing concerning these entities.

SUMMARY SHEET

FINDINGS

1. The potential for diversion of critical military hardware exists to a much greater degree in the Department of Defense supply system (i.e., theft from depot stock) than in the property disposal system.

2. Because of definitional and classification differences between the DOD Military Munitions List Items and the Department of State Munitions List Items, materiel requiring export licenses is not controlled to the same degree by DOD. Similarly, items on the Department of Commerce Commodity Control List are not adequately identified when offered for sale in the Pacific Basin. (See country reports Philippines, Japan and Korea).

3. The DOD facilities that generate surplus property do not always identify equipment turned into the Defense Reutilization and Marketing Offices (DRMO) with the complete National Stock Number (NSN). Consequently, the system fails to provide an adequate means for tracking munitons items and for ensuring proper demilitarization where required.

4. The apparent commingling of usable merchandise with merchandise sold as scrap enables the purchaser to salvage these items. Moreover, items required to be demilitarized are not demilitarized in accordance with applicable instructions leaving usable parts or components intact or instructions were so vague as to provide insufficient guidance on demilitarization procedures. (See country report Philippines).

5. Personnel in the Defense Reutilization and Marketing Service lack the equipment and training to demilitarize materiel properly. (See country reports Italy, Philippines, and Japan).

6. Integrity and Reliability checks (I&R) and Strategic Trade Control (STC) checks are not equivalent to the pre-license inquiries conducted by the Departments of State and Commerce in their respective licensing process. Due to the absence of standarized procedures, I & R checks are either not conducted at all or are conducted by correspondence/ telephone, similar to routine credit checks. (See Europe report).

7. Compartmentalization by Department of Defense investigative elements results in reduced coordination and sharing of informaiton between agencies. (See country report Philippines).

8. Military Munitions List Items returned to the United States frequently list the U.S. Government as shipper and consignee when in fact the shipper is a U.S. citizen or foreign national and the consignee is a U.S. entity. This practice currently authorized by Department of Defense appears contrary to International Traffic in Arms Regulations (22 CFR 123.2).

RECOMMENDATIONS

1. The Military Munitions Control List should mirror the Department of State Munitions Control List and the Deparment of Commerce Commodity Control List, respectively.

2. Demilitarization should be accomplished by the complete destruction of the items and its parts by smelting, compacting or shredding.

3. Destination control statements and actual notice of an item's licensability should be included in all contracts and/or bills of sale of controlled critical materiel.

4. The Defense Logistics Agency should be precluded from acting as a de facto licensing entity in effecting the transfer of munitions list items to foreign purchasers without demilitarization and absent Department of State authorization.

5. Category II Military Munitions List Items (22 CFR 121.01, Subchapter M) returning to the United States should be covered by a performance bond and accompanied by invoices that accurately reflect the nature of the item and the shipper.

6. Information sharing between Department of Defense investigative agencies concerning theft, disposal and possible diversions of military equipment should be increased.

DATE:

FILE: INV-3-03-E:OE:S:M TN

TO : Chief, Munitions Investigations Branch
Strategic Investigations Division
Office of Enforcement

FROM : Thomas C. Neill
Operation RETREAD - Pacific

SUBJECT: Operation RETREAD Activities, Findings and Recommendations Relating to the Pacific Theatre

BACKGROUND:

In accordance with a Memorandum of Understanding between the U.S. Customs Service and the Office of Inspector General, Department of Defense, U.S. Customs Service special agents addressed certain issues relating to the sales of military equipment made under the auspices of the Defense Reutilization and Marketing Service (DRMS). Activities relating to this project were conducted as Operation RETREAD. This memorandum addresses Operation RETREAD activities, findings and recommendations relative to DRMS sales in the Pacific Rim countries of Thailand, Korea, the Philippines and Japan.

OBJECTIVES:

The objectives of Operation RETREAD were several: 1) to assess whether or not critical munitions list items (MLI's) are being made available through DRMS sales; 2) to determine whether or not munitions list items are being diverted to sovereignties antagonistic to U.S. interests; 3) to address findings with recommendations relating to DRMS sales of munitions list items; and, 4) to initiate investigations based upon findings as deemed appropriate.

METHOD OF OPERATION:

As initially conceived, agents assigned to Operation RETREAD were to be provided with data identifying munitions list items critical to the operation of military equipment currently in use by specific foreign powers which are considered hostile to the U.S. Too, specific intelligence information for follow-up investigation was to be provided to the agents. Neither of these types of information were made available to the agents at the

outset of the study. This data was to have been compiled by the Operation RETREAD analytical staff from information provided by the Defense Logistics Agency. And once a portion of the data was received, the analytical staff reported that due to problems in record maintanence by the Defense Logistics Agency, the data derived could not be considered accurate nor complete.

In view of the foregoing, the agents devised an alternative, albeit laborious, method of developing appropriate investigative leads. This process involved: 1) reviewing DRMS invitations for bid (IFB's); 2) identifying significant MLI's advertised and described in the IFB's; 3) identifying the purchasers and secondary purchasers (subsequent purchasers) of significant MLI's; and, 4) interviewing those purchasers and secondary purchasers and examining pertinent records relative to the ultimate use and/or destination of the items. (As noted elsewhere, this process was somewhat flawed, but was considered the most logical and expedient alternative.)

It was determined by the Operation RETREAD agents that they would focus upon DRMS sales for the period from approximately January 1984 to February 1986. It was believed that leads developed relative to sales prior to that date might be too cold to be effectively pursued and that items sold subsequent to that period of time might not yet have made their way to their ultimate destination.

During briefings in Washington, D.C., the agents were advised by DOD personnel that relevant IFB's and sales records for the DRMS (Pacific Region) were located in Hawaii. Three agents travelled to Hawaii, meeting with DLA security personnel and DRMS regional staff. At that time, the agents were told that only sales records for the period from January 1985 to July 1985, were available at that location and that records for the remaining targeted period of time were located in the countries of Thailand, Korea, the Philippines and Japan.

Approximately five days were spent in Hawaii reviewing nine volumes of IFB's and negotiated sales records, copying parts of same, and sorting the material for later use in the various countries. IFB's were reviewed for obvious reference to MLI's; specifically, items having the greatest potential to provide an adversary with critical support capability. (This identification was necessarily based upon the limited data contained in the IFB's, as time was not available to attempt further analysis through National Stock Number query.) Successful bidders of selected MLI's were identified from DRMS records. Copies of pertinent documents relating to the sales were made and sorted by country for later use in attempting to interview the purchasers and determine the ultimate use(s) and destination of the item(s). Upon completion of this activity, one agent travelled to Thailand and Korea and two agents departed for the Philippines and Japan. In those countries, the exercise noted above was continued for the remaining eighteen months targeted. Meetings with government personnel and purchasers were held. The results of those activities are related country-by-country, and were authored by the individual agents who visited those countries.

THAILAND

Upon meeting with the DRMS Security Control Officer (SCO) in Bangkok, Thailand, all records relating to sales made/administered by the DRMO Bangkok for the period from January 1984 to February 1986, were requested. The DRMO SCO supplied files which were said to encompass the period of time October 1984 to present.

Records relating to a total of approximately eleven sales were examined. Those records included IFB's, negotiated sales, successful bidder lists, and awards of sales. Among the items found to have been sold were office machines and equipment, small arms brass, cargo trucks, utility vehicles, buses and ambulances, automotive parts, aircraft engines, forklifts, tractors, tires, and "smashed" electronic/communications scrap. Stock or part numbers were absent from all but a small percentage of the documents relating to the sales. Out of the eleven sales, only two items were deemed to evoke remote interest (1) a relatively small batch of aircraft parts, and (2) engines for a C-123 aircraft.

Interviews with the purchasers of the aircraft parts and engines were conducted. Nothing was developed which would indicate that the items were destined for use by a hostile sovereignty. The aircraft parts were allegedly sold as scrap (not confirmed) and the aircraft engines were allegedly returned to the U.S. (partially confirmed). (Reports of Investigation BK06AT6HL012, dated August 1 and 26, 1986, respectively, address the inquiries made.)

Findings:

DRMS sales in Thailand are generally very small and infrequent when compared to other Asian sales. Hence, the likelihood of significant MLI's being made available through DRMS sales there are minimal. In fact, no MLI's of significance were found to have been disposed of through DRMS sales in Thailand.

Recommendations:

In light of the difficulty in determining and confirming ultimate disposition of MLI's, it is recommended that MLI's be completely neutralized, by smelting, compacting or shredding, beyond any chance that they can be utilized as originally intended.

JAPAN

On August 20, 1986, Senior Special Agent Dufner and Special Agent William Loughrige traveled to Tokyo, Japan. On August 20, 1986, they met with Customs Attache John Helmerson. Helmerson scheduled meetings with the DRMO Chief at Camp Sagami, Japan, and with the Sales Chief at Camp Zama, Japan. No appointments could be scheduled with DOD investigative agencies due primarily to schedule conflicts.

The list of successful bidders for Category II Military Munitions List Items (MLI) in Japan that had been compiled in Hawaii was reviewed with Helmerson. It was decided to attempt to interview as many of the people on that list as possible at the local spot bid sale being conducted at Camp Sagami on August 21, 1986.

On August 21, 1986, Customs Attache John Helmerson, Senior Special Agent Francis X. Dufner and Special Agent William Loughrige visited the DRMO at Camp Sagami. Arai Shoshi and K. Ikeda, two of the larger purchasers, were present at the facility to participate in the local spot bid sale. These two were interviewed with the help of an interpreter from the DRMO.

Takaaki Arai related that he was the middle son and the spokesperson for Arai Shoshi. He said his company purchased equipment for themselves, which they generally sell as scrap, and as agents for other businesses including Americans who have the equipment shipped back to the U.S. He said that Japanese Customs require total demilitarization of all Category II (MLI) equipment sold into the commerce of Japan. Takaaki Arai said he would obtain the information concerning the foreign companies he had represented and provide that information to the Customs Attache, Tokyo.

K. Ikeda related that he was a two person operation including himself and a secretary. He said he never bids on any surplus equipment unless he has been approached to do so and the material has already been sold to the interested party.

On August 25, 1986, Customs Attache Helmerson, Senior Customs Representatives McEwen and Gorman, Senior Special Agent Dufner and Special Agent Loughrige went to the DRMO Sales Office at Camp Zama. They reviewed records of sales by the office for the years 1984 and 1985. It was discovered that a large number of sales had been made to American concerns, some of which were linked to a suspected violator of U.S. export laws. The RETREAD team also discovered that on August 4, 1986, an individual identified as [redacted] representing [redacted] had shipped military parts that were possibly stolen to the U.S. (As of August 25, 1986, action was taken by the Customs Attache, Tokyo, in concert with the Special Agent in Charge, Seattle, to intercept this shipment.)

During the survey in Japan, it was discovered that Japanese Customs did not necessarily require total destruction of all Category II (MLI) items. They appear to be concerned with aircraft parts but seem to have little interest in Category II (MLI) electronic equipment other than to collect proper Customs duties on the material brought into the Japanese economy.

The DRMO facilities require that the successful bidder complete the demilitarization process himself. The work is supervised by DRMO personnel, most of whom are foreign nationals themselves. The team learned that the personnel have never received training on demilitarization and observed that they have limited equipment for the demilitarization process.

Information had been provided to Senior Special Agent Dufner and Special Agent Loughrige that a group of bidders in Okinawa had formed a local bidders' association that required membership before anyone could bid on U.S. Government property. There were allegations that this association was involved in improprieties. Since the time table for the study did not allow enough time to travel to Okinawa to inquire into these allegations, the matter was referred to the Customs Attache, Tokyo for follow-up.

The study revealed that the U.S. Embassy, Tokyo, does no integrity and reliability (I&R) checks at the request of the DRMO sales contracting officer. These checks appear to have low priority and the Embassy does not contact the Customs Attache, Tokyo, to run the names through the U.S. Customs Service index systems. The Customs Attache, Tokyo, advised that he would request that all future checks done by the Embassy would also be run through his office.

Findings:

Demilitarization is performed by successful bidders under the supervision of DRMO foreign national employees who are not properly trained.

I&R checks are not conducted by the American Embassy, Tokyo.

Purchasers of surplus material are in fact nominees for the actual purchasers.

Recommendations:

All Military Munitions List Items should be destroyed by smelting, compacting or shredding prior to sale.

I&R checks, comparable to Department of State, pre-license checks should be conducted for each successful bidder.

REPUBLIC OF KOREA

RETREAD activities in the Republic of Korea (ROK) included meetings with DRMO personnel, examination of DRMO sales documents, visits to DRMS disposal yards in Bupyong and Pusan, interviews of purchasers and secondary purchasers of MLI's and visits to storage facilities owned/operated by purchasers and secondary purchasers.

In Seoul, the investigating agent met with the DRMO Chief and the Sales Contracting Officer. These meetings and other activities were arranged, to a large extent, by a local DLA investigator who provided all assistance requested.

From DRMO personnel and examination of records at the Bupyong DRMO, it is apparent that sales of excess military property in the ROK are governed to a large extent by an agreement between the ROK and the U.S. which was entered into in October 1959. That agreement has been occasionally amended since 1959.

The agreement specifies that the ROK has "priority" rights to purchase excess property located in the ROK when the U.S. intends to sell such property in the ROK. Specifically, the agreement provides that "the Korean Government or its designated agency shall have the right of priority of purchase of such property for use by the Korean Government or its subordinate elements."

In practice, according to DRMO personnel and confirmed by sales contract files, the vast majority of sales of excess property are to the ROK, and or its subordinate elements. Approximately ninety-percent of property sold in the ROK is sold through a "negotiated sale" process to the ROK "Patriots and Veterans Affairs Association" (PVAA). The PVAA succeeded the Korean Veterans Association (KVA) as the quasi-governmental agency which purchases excess property and subsequently sells/brokers such property. The PVAA purchases and sells through an agent-firm called NARA INCORP (NARA).

Property disposal yards in Bupyong and Pusan were found to be in reasonably good order. Material stored at the Bupyong yard was segregated and arranged by about forty foreign nationals supervised by two U.S. Army personnel.

No items of obvious strategic value were observed during the inspection. With the exception of a few armored vehicles, not for sale, the only items identified by the SCO as MLI's were helicopter parts and large caliber shell casings. A close inspection of the helicopter parts revealed none which appeared

to be usable for their original functions. They were bent, torn, or otherwise damaged, clearly identifiable as "scrap." As to the shell casings, they were dented, and, according to the SCO, would undergo further demilitarization prior to leaving the yard. [The SCO and PVAA representative independently stated that items "de-miled" (demilitarized) are additionally inspected by ROK authorities and that the ROK authorities sometimes required further destruction before permitting them to leave the DRMO yard(s).]

With respect to negotiated sales to the PVAA, about fifty-seven sales contracts were reviewed. Seven of those contracts were identified as involving MLI's of potential interest; aircraft parts and electronic components. The PVAA is represented by NARA. According to the manager of NARA, NARA acts as an agent for the PVAA. The manager said that upon negotiating a purchase from the DRMS, NARA seeks a buyer from a number of regular purchasers. In the time between PVAA's (NARA's) purchase and when possession is acquired, the goods purchased are usually re-sold. In the case of aircraft parts, they are allegedly sold to smelters which melt the parts into ingots. In the case of electronic parts, they are allegedly mutilated prior to leaving the DRMO yard. The PVAA agent insisted that the parts are mutilated prior to leaving the DRMO yard to the extent that they cannot be used for their original purposes. The PVAA representative stated that NARA does not export and that NARA's customers do not export goods purchased from NARA with the possible exception of uniforms. The representative pointed out that ROK imports raw materials such as steel and aluminum and that it would not make sense to export same.

An inspection of the NARA storage yard revealed no evidence of MLI's being stored there. A surprise request of the PVAA representative to provide documentation relative to re-sales of specific purchases was made at the NARA offices. That request was honored immediately. However, the secondary purchasers were located in cities distant from Seoul. Limited time precluded verifying the information provided by the PVAA representative with the secondary purchasers.

Property not disposed of through the negotiated sale procedure to the PVAA is sold through a "spot bid" process. Such property typically consists of relatively small lots of goods. (The local DRMO does not sell through the sealed bid process.)

In the ROK, as in Thailand, the investigating agent requested DRMO personnel to provide all contract sales files involving MLI's for the period from January 1984 to February 1986. About twenty-seven such files were provided. It was determined that in addition to some aircraft and electronics parts/components, such items as tents, uniforms, and brass had also been designated as MLI's. A total of eleven spot bid sales

were selected as possessing the potential of involving military application. [These selections were based upon reliance of the DRMO "Category II" designation and the experience of the investigating agent. These limitations were necessary due to the consistent fact that neither "invitations for bid" nor sales contracts were specific as to the commodities involved (i.e. part numbers or stock numbers.)]

Of these eleven spot bid purchases, it was determined that one individual was a common factor in seven of the purchases. That individual was both a successful bidder and a secondary purchaser from other successful bidders. An unannounced visit to the individual's business found a mini-DRMO yard situated on about one half acre occupied by items identifiable as transformers, motors, used tires, old washing machines, and refrigeration units in various states of disrepair. Labor intensive activities only economical in some parts of Asia were in progress. No items of a strategic nature were identified during that visit. No records relating to the purchases in question and which would substantiate the purchaser's statements regarding ultimate disposition, were available. The purchaser stated that scrap was re-sold to smelters.

One other purchaser was interviewed. The MLI item(s) involved, among other things, an ocilloscope. No NSN or other identifier was available. The purchaser operated a very small electronics store among a large number of other such shops. The purchaser stated that he had dismantled the parts purchased from the DRMS for their sub-components. He said that the parts were individually sold locally; that they were not exported.

The DRMO files, almost without exception, included follow-up correspondence with spot bid purchasers. That correspondence requested information concerning the ultimate use and purchaser of the items. Purchasers who neglected to respond were routinely referred for inclusion on an "experienced bidders list" for exclusion from subsequent sales.

Findings:

No items of a strategic or critical nature were observed at the DRMO sites during the study and onsite review; nor were such items found at the storage facilities of the two largest purchasers from the DRMO in Korea. Item identification was hindered by a general lack of specific identifying data such as stock or part numbers. No evidence was found which would indicate that strategic or critical equipment was even sold through the DRMO in the ROK. (It would appear that DRMS sales in Korea would be a very poor source of equipment for military purposes. The equipment would be severely damaged and not available on a regular basis.)

Notwithstanding the above, DLA made reference to reports of "salting" of goods sold through the DRMS in the ROK; that is, stolen (new or usable) items being intentionally placed into scrap. While thefts are a concern outside the scope of this project, the use of salting indicates that some customers of the DRMS are less than completely honest.

Recommendations:

Generally, no MLI's should be sold unless they have been demilitarized. To preclude any problems with interpretation, this would mean burning, smelting, compacting or shredding. (One purchaser suggested this approach, in view of the U.S. Government's concern.)

DOD investigative agencies should increase interaction with respect to thefts and the use of DRMS sales as a conduit for stolen goods, salting.

Routine verifications of purchaser statements should be made on a timely basis. Too, occasional covert surveillances of goods as they leave the DRMO's would assist in validating statements made by the purchasers. This would assist in implementing the preceding recommendation.

PHILIPPINES

Upon arrival in the Philippines, the RETREAD team of Senior Special Agent Dufner and Special Agent Loughrige were met by DLA Investigator David Burby. Through Burby, contact was made with investigators from the Naval Investigative Service (NIS) from Manila, Subic Bay Naval Station and Cubic Point Naval Air Station located at Subic Bay. Burby also introduced the team to investigators from the Office of Special Investigations (OSI) at Clark Air Force Base. From those meetings it became apparent that theft of military equipment from the supply system was a major problem having priority with both those agencies.

Burby also had made arrangements at the sales office for the DRMO at Subic Bay for desk space from which the RETREAD team could operate. The sales records for the time period from January 1984 to July 1986 were reviewed. It was discovered that a variety of aircraft parts, electronic equipment, test equipment and other items that were listed as military munitions list items requiring demilitarization had been sold during that time period. Over 35 Filipino persons or companies were identified that had bid for or purchased this type of material. One U.S. company that was suspected of being involved with diversion of military equipment was identified as having made purchases in the Philippines.

The list of purchasers was given to the DRMO personnel who were able to identify 10 as they appeared at the DRMO to conduct business. These 10 were interviewed at the DRMO facility as well as 3 others who were interviewed at their place of business. The results of those contacts and interviews were included in a memorandum to the SCR, Hong Kong, for his use, and are attached to this report.

In summary, these people indicated that the bidders for surplus equipment trade and sell the equipment between themselves and other persons. And they often salvage good usable equipment from material sold as scrap.

One company allegedly refurbished a $20,000 part and resold it to the Air Force. The part did not work. This information was supplied to the OSI. Several bidders said they bid on the electronic equipment only because they know that there are companies that will buy the equipment from them if they should happen to be the successful bidder. These secondary companies then refurbish the equipment, regardless of condition, and sell it as usable equipment. They acquire spare parts from bidders who have salvaged them from scrap.

One of these companies buys the spare parts needed from anyone who has them, for cash, without issuing receipts or keeping records of the purchase. While at that companies' premises the owner reported that he had over a dozen klystron

tubes for sale at $45.00 each. He told several different stories about where the parts came from. The agents bought one of the tubes from him and it was later turned over to OSI personnel, Clark Air Force Base.

Other bidders, when interviewed, indicated that some of the bidders were involved in fencing equipment stolen from the military. However, they would not provide any other specific information; names, addresses, company officers. For instance, one source said to check the names on the bidders list and the suspect (in fencing stolen property) could be identified.

In addition to the companies that refurbished the military equipment, one company was identified that acted as the agent for a U.S. company in purchasing surplus material. The owner, a retired Philippine Air Force Colonel, related that all the equipment he purchased, always aircraft spares, was shipped to the United States. He also said he purchased military parts from other bidders but was not able to identify the vendors or the equipment. One of his shipments involved aircraft parts from a DRMS sale that had a purchase value of $15,000 to the Air Force. The invoice (bill of lading) used by this party to manifest his shipment took over 90 single-spaced type written pages to describe the merchandise. The shipper, as well as the consignee, was shown to be the U.S. Government although the U.S. Government had no control over the shipment. The merchandise was described as hardware and general merchandise. In addition, he had a large amount of material in his warehouse he had not shipped to the U.S. He said he had bought that equipment on speculation and his U.S. company had not been interested in it.

During the efforts to contact the successful bidders, a group of American citizens residing or conducting business in the Philippines were identified. As being associated in the business of handling surplus property. Some of the these people had never returned to the U.S. after World War II. SSA Dufner was contacted several times by one of these men who claimed to know others who were involved in various criminal activities including the fraudulent sale of the used equipment to Clark Air Force Base. SSA Dufner reported this information to the DOD investigative agencies and learned that this source was himself under investigation by NIS. The information SSA Dufner had obtained was crucial to NIS in its investigation.

As a result of the information gained from the interviews of these parties, a meeting was scheduled with NIS, OSI, the Senior Customs Representative, Hong Kong, and DLA personnel. At the meeting, all the information obtained was provided to these parties for their use, including that relating to the sale of klystron tubes which were suspected of having been stolen from one of the military bases in the Philippines.

The team learned, during these contacts in the Philippines, that the Military Suppy System was subject to large inventory shortages. These shortages allegedly involved millions of dollars of equipment. The team determined that political consideration for the Philippine Government may influence and complicate the investigations of these thefts. For instance, one investigation involving the theft of almost $.5 million worth of equipment was stopped because the female suspect was politically active in the local community. It was reported to the team that one the base commander was concerned that any allegation against this woman could be counter productive.

During the review and in visits to the Philippine DRMO sites, it was learned that there was little or no training as to how to demilitarize some of the electronic and aircraft equipment. The term mutilation was not clearly defined nor understood by the DRMO personnel.

The study did reveal, however that integrity and reliability checks conducted by the U.S. Embassy in Manila, relative to purchasers, appeared to be comprehensive and several bidders were denied access to Category II merchandise based on the results of those inquiries.

Findings:

Theft from the military supply systems or depot stock and the potential for diversion of stolen military equipment is apparently a larger threat than the diversion of materiel acquired through the disposal system.

Differences exist between the DOD definition of military munitions list items and munitions list items controlled and licensed for export by the Department of State.

Items on the Department of Commerce Commodity Control List (CCL) are not identified on invitation for bid in the Pacific Region.

Military units responsible for identifying property to be surplused (generating units) do not always properly identify equipment turned into the Defense Reutilization and Marketing Offices (DRMO) with complete National Stock Number (NSN), consequently, the DRMO's can not accurately identify material for demilitarization and sale.

There is, apparently, comingling of usable merchandise with merchandise sold as scrap; therefore, product listed as scrap can be salvaged by the purchaser.

Personnel in the DRMO's do not have either the proper equipment or training to demilitarize all equipment requiring demilitarization.

The demilitarization procedures are inconsistent among different DRMO locations.

The definition of mutilation is not clear.

Military munitions list products returned to the U.S. by the purchaser require that the shipper and consignee be shown as the U.S. Government, however but the U.S. Government has no control over the shipment.

Integrity an Reliability checks (I&R) and Strategic Trade Control (STC) checks are not equivalent to the screening and controls followed by the Departments of State and Commerce in their respective licensing process. This is demonstrated by the fact that the Strategic Trade Controls are administered by the sales officer, who relies on the response to form letters sent to successful bidders requesting information concerning the first resale of munitions list items. There are seldom any verifications of these responses consequently the STC amount to ineffective paper control over munitions list items equipment.

Compartmentalization by DOD investigative elements results in reduced coordination and sharing of information between agencies.

Recommendation:

All surplus Category II military munitions list items should be reduced to unusable condition by smelting, crushing or compacting.

DOD units generating excess property should be required to properly identify and lable property.

Regulations permitting exporters to list the U.S. Government as exporter and importer of items purchased and returned to the U.S. should be amended to reflect the true identity of the exporter and importer.

Sales records, invoices, and bills of lading should clearly state on their face that the items require specific license, and include destination control statements similar to that found in 15 CFR 373.4.

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE:

FILE: INV-3-03-E:OE:S:M SN

TO : Chief, Munitions Control Branch
Strategic Investigations Division

FROM : Operation RETREAD - Europe

SUBJECT: Operation RETREAD Activities, Findings and Recommendations Relating to the European Theatre

Background:

In February 1986, the U.S. Customs Service and the U.S. Department of Defense (DOD), Office of Inspector General, entered into a Memorandum of Understanding to conduct a study to determine the extent of the illegal exportation, diversion and transshipment of munition list equipment sold as surplus from DOD inventories. U.S. Customs Service special agents conducting the study addressed issues concerning the disposal of excess and surplus munitions and strategic list items from the Defense Reutilization and Marketing Service (DRMS). The project was referred to as Operation RETREAD. This memorandum details the Operation RETREAD study for Europe.

Methods:

Prior to the commencement of the European phase of Operation RETREAD, a listing of National Stock Numbers (NSN) was to be provided to the RETREAD agents by the analytical support staff. This listing would facilitate the expeditious identification of critical munitions list items currently in demand by Iran, Libya and Nicaragua. Since this crucial listing of NSN's was not available at the outset of the study the agents devised an alternate method of developing appropriate leads. This process involved: 1) reviewing the Security Trade Control purchasers record; 2) identifying purchases which matched the initial list of suspect bidders compiled by RETREAD agents in Washington; 3) identifying the purchases of significant munitions list items; and, 4) identifying initial and subsequent purchasers.

At the outset, the team interviewed personnel and reviewed the records of the Defense Reutilization and Marketing Office (DRMO), European Regional Headquarters. The examination of sales records was confined to a review of the records for the period from January 1984, to July 1986. The agents scrutinized the sales of over 600 munitions and strategic list items. Two possible targets for diversion, [redacted] Germany, and

[redacted] England), were selected for further review. It was initially determined that these two firms merited more intense inspection. Of all firms reviewed it was decided that [redacted] in England had the highest potential for diversion violations. Consequently, it was decided that one agent would travel to Germany, one would travel to Italy and one would travel to England based on various factors, including the number of DRMO's in the country (15 in Germany and 6 in Italy), and the potential for investigative leads (England Louvax Limited).

Security Trade Controls:

The DRMS records for Europe are located in Wiesbaden, West Germany. The DRMS Security Trade Control Monitor (STC), located in Wiesbaden, is responsible for implementing the DRMS security trade in Europe controls. The team observed that the STC monitor, on her own initiative, devised a consolidated system to track the successful bidder's purchases of munitions list items. The European DRMO identifies these items as Import Certificate and Delivery Verification Certificate (IC/DV) items. The team determined that the STC monitor has the responsibility of ensuring that Integrity and Reliability Inquiries (IR) for successful bidders are conducted, and, requires that the successful bidder of an IC/DV item provide an IC/DV from the intended country of import. Although it is incumbent on the purchaser to notify the DRMS of any subsequent sale, the purchaser is sent a form letter every three months requesting the disposition of the item. Regulations/policy require that before the resale is authorized, an I&R inquiry is performed.

The team noted that the penalty for not complying with the conditions of sale, is placement on the Bidder's Experienced List (BEL). Once a firm is placed on the BEL, the firm is prohibited from purchasing DRMS surplus property. There are no additional penalties (such as fines or criminal penalties) for failure to comply with the conditions of sale.

Regarding the I&R inquiries that are conducted relative to purchasers of IC/DV equipment, the team determined that the STC monitor requests the American Embassy, located in the purchasers country of domicle, to ascertain the integrity and reliability of the purchaser. Thoroughness of the check varies from country to country. In Germany, officials at the American Embassy, Bonn, stated flatly that they are undermanned and they cannot effectively perform the checks. In Italy, the American Consulate in Milan, determined that a subsequent purchaser was nothing more than a street vendor and should not have munition list equipment.

Findings:

Twenty Italian and ten English firms/individuals who had purchased DRMS items were referred to the appropriate foreign

authorities for further examination to determine if any violation of law had occurred.

- There was virtually no DRMS record discovered during the course of this initiative which reflected that either major weapon systems or the spare parts for those systems for which Iran, Nicaragua and Libya have a critical need are passing through the DRMS European inventory.

GERMANY

Upon consideration of the numerous stated Operation Retread objectives, the diversion and theft of munitions list items from the Defense Logistics Agency Defense Reutilization and Marketing System (formerly known as the Defense Property Disposal System) was to be of paramount importance. A list of major weapon systems for which the countries of Iran, Nicaragua and Libya require spare parts was provided by the DOD segment of Operation RETREAD at Washington. Preliminary analysis of available data indicated that the DRMO yards were likely sources of supply for these needed weapon systems and spare parts.

During the month of August 1986, on-site evaluations of ten DRMO yards located throughout the Federal Republic of Germany were conducted. Inspection tours of these facilities, DRMO offices and off-site branches, revealed that there were no records to verify or that indicated that critical military munitions list items, nor the useable spare parts for those items, are available through the DRMS in Germany. During the inspection, no useable critical military hardware was extant at the DRMO sites. Additionally, a scrutinization of the list of critical short life repair parts, developed by the DOD Operation RETREAD analytical staff, to sales records and inventory revealed that of 200 items selected from the list, only one item was found to have passed through the entire DRMO European system during the period from January 1986, to July 1986. The item was found to be a $25 track fuse replacement part for an M-113 armored personnel carrier. Additionally, all NSN's in the listing were screened regardless of material condition code, on the DOD Interigation Requirements Information System (IRIS), which is a central repository by stock number of all excess and surplus property in inventory. None of these items were found in inventory.

Interviews of all DRMO Chiefs disclosed the concensus that DOD elements responsible for identifying property to be surplused and initiating action (generating units) consistently failed to place complete National Stock Numbers on the DOD Forms 1348-1, turn-in documents, thus making identification of critical components virtually impossible.

The inspection tour of the Seckenheim DRMO facility revealed that a majority of equipment handled consisted of scrapped electronic equipment (i.e., spectrum analyzers, signal generators, oscilloscopes). Observed during the visit to the site was the reduction to scrap of military munitions list items by cutting and burning.

The inspection tour of the Kaiserslautern DRMO (the largest DRMO facility in Germany) disclosed that the facility handles large amounts of textiles, scrapped and useable wheeled vehicles, worn track pads, sprockets, and both scrapped and useable earth moving equipment. Of note, was the fact that the DRMO Chief was most enthusiastic about assuring proper demilitarization of all military munitions list items.

The inspection of the Nurnberg DRMO facility indicated that a majority of equipment handled were textiles (i.e., sleeping bags, boots, rain gear, pistol belts, ponchos, etc.,). There were also a number of military school buses and privately owned vehicles. The yard contained a large amount of scrapped spectrum analyzers and oscilloscopes. However, because they lacked proper identification, they could not be further examined to determine if the proper demilitarization would be performed prior to sale.

The inspection of the Mainz-Kastel DRMO facility revealed that the majority of equipment handled consisted of scrapped electronic goods (i.e., spectrum analyzers, signal generators, oscilloscopes) and worn tank track. Based on review of records and on observation, it appeared that the a small amount of identifiable military munitions list items handled by this site were demilitarized in accordance with applicable regulations.

An inspection tour of the Grafenwoehr DRMO facility indicated that a majority of items handled consisted of artillery steel shell casings.

An inspection tour of the Hanau DRMO facility indicated that a majority of items handled consisted of component parts for wheeled vehicles (starters, generators, radiators, etc.,) and some scrapped tracked vehicle starters and road wheels. This facility also handled small amounts of helicopter spare parts and a large amount of textile materials.

A visit to the Giessen DRMO established that the facility handles primarily junked cars, used track pads and track shoes.

An inspection of the Ludwigsburg DRMO indicated that this facility handles primarily textiles and scrapped radio mounts and electric motors.

A visit to the Augsburg DRMO facility indicated that this facility handles electric generators, tank track and scrapped wheeled vehicles.

An inspection tour of the Bitburg DRMO facility revealed that the majority of items handled was of Air Force origin. The military munitions list items consisted of scrap titanium derived from pieces of aircraft skin, demilitarized fighter nose cones, worn F-15 nose wheels and 20mm steel shell casings. There were also a large number of wheeled vehicles and textiles. Of note was the fact that at the site during the inspection 10 oscilloscopes were being prepared for sale. The material was classified Demilitarization Code 'A' and had incomplete NSN's affixed, thus making identification impossible.

In addition to inspecting the various DRMO sites, the team briefed personnel from the various Military Investigative Services about the operation and inquired as to their preception of the threat based on their knowledge and experience.

The consensus of Army Criminal Investigations Division (CID) personnel and Military Intelligence Officers contacted was that although the DRMO system does handle some critical military hardware subject to possible diversion, it handles a relatively insignificant percentage of desirable equipment. Therefore, the more vulnerable element of the system in Europe, having potential for diversion, is theft from depot stock. In the opinion of CID agents interviewed, the Kaiserslautern and Mainz depots are focal points for theft and ultimate diversion of critical military hardware.

To support this theory, the team was advised of a recent Army Audit Agency report detailing the inventory loss of $47 million from the Mainz tank facility during the past year. Regarding the Mainz facility, on August 20, 1986, Special Agent McQuade and a DCIS agent met a confidential informant who alleged that a [redacted] of the international trading company, [redacted], Holland, sells M-113, M-47, M-48, M-60 tank engines and parts obtained directly from the Mainz tank facility by a "connection" [redacted] maintains in that facility. The source alleged that [redacted], in partnership with [redacted], a firm formerly located in Holland and on the bidders debarred list, facilitates the transfer of these parts to Iran. As a result of the information provided by this source and other data, DCIS, in conjunction with CID, initiated a covert investigation of the Mainz tank facility and [redacted]. The Customs Attache's, The Hague and Bonn have also been advised of these allegations and of the DCIS investigation and are in contact with DCIS, Weisbaden, so as to coordinate any action forthcoming if it is determined that diversion of the equipment from the Mainz facility to Iran is occurring.

ITALY

Upon initial review of the DRMRS records in Wiesbaden, seven companies/individuals were selected for further examination based on the items they purchased. There are not any allegations or evidence of diversion. The items they purchased were strategic or munitions list items that are controlled by U.S. export laws.

These initial seven names were forwarded to the Government of Italy (GOI) officials during a briefing on Operation Retread. GOI expressed an interest in the operation and requested additional information on all Italian purchases from DRMRS system. This information will be forwarded under separate cover to the GOI along with supporting documentation.

The GOI export laws regarding military items closely parallel those of the United States. The GOI requires a license to export from Italy. They have banned military exports to Iran and Libya. They are concerned with companies not complying with their export laws.

The first seven companies/individuals listed are the names that were initially forwarded to the GOI officials. The second six companies listed sold their DRMRS items to [redacted] has not bought from the DRMRS system direct even though he has purchased over 500 munition and strategic list radios from the DRMRS purchasers. The third list of eight names purchased items from DRMRS since October 1, 1984.

These twenty Italian companies/individuals and one German firm represent all the Italian companies/individuals that have purchased items from DRMRS in Europe since October 1, 1984. The one German firm [redacted] GmbH) sold to and Italian firm [redacted].

These first seven companies are of interest to Operation Retread because of the items they have purchased. It should be noted that the firm [redacted] purchased the demilitarized (demil) howitzers, sold the axles, wheels and suspensions to a German firm, [redacted] was involved in a U.S. Customs Service investigation of selling tank parts to Iran. [redacted] and [redacted] were on the Bidder's Experienced List because of failure to complete the requirements of the contracts. There are not any allegations that these companies have illegally diverted the items.

COMPANY	ITEM
[redacted] Tavernanova, Casalnuovo (NA)	Mine Sweepers Demil Howitzers Tractor Trucks
[redacted] Cessalto (Treviso)	Scrap-Brass Cartridges Iron Scrap (Aircraft Fuel Tanks)

[redacted] Palermo	Electrical Scrap
[redacted] Catania	Iron Scrap
[redacted] Granarolo Dell'Emilia, (PO)	Aircraft External Fuel Tank Semi-Trailer Tank Trans. Missile Testing Equip.
[redacted] La Spezia	Demil Howitzers Steel Scrap (Demil Trucks)
[redacted] Viareggio (Lucca)	Radios Radio Beacons

The following companies/individuals sold their munition and strategic equipment (mostly radios) to Mario TUCCORI.

COMPANY

[redacted]
Casarza Ligure (GE)

[redacted]
Firenze

[redacted]
Livorno

[redacted]
Boeblingen, West Germany

[redacted]
Madonna dell'Acqua (Pisa)

[redacted]
S. Lazzaro di Savena (BO)

The following seven companies/individuals completed the Italian bidders that are primary purchasers through the DRMRS system since October 1, 1984. These bidders/purchasers were provided at GOI's request.

COMPANY	ITEM
[redacted] Lombardore (TO)	Van Trailers

[redacted] Baseldella (Udine)	Van & Low Bed Trailers
[redacted] Carzago Brescia	Aircraft Hydraulic System Test Stands
[redacted] Nerviano (MI)	Electrical Scrap/ Telephone & Inter-communication Equipment
[redacted] Pisa	Aircraft Maintenance Equipment
[redacted] Catania	Electrical Scrap & Aircraft Parts
[redacted] Livorno	Electrical Scrap & Electronics
[redacted] Sesto San Giovanni (MI)	Van Trailers

VISITS TO THE DRMOs

In Italy there are two Defense Reutilization and Marketing Offices (DRMO)s: Aviano (Pordenone) and Livorno (Pisa). They report to the DRMRS Region in Wiesbaden, West Germany. These DRMOs were visited during the week of August 11 through August 18, 1986.

There are four DRMO Off-Site Branches (OSB)s: Vincenza OSB reports to Aviano DRMO; Sigonella (Catania), Naples and San Vito (Brindisi) OSB report to Livorno DRMO.

Aviano and San Vito are U.S. Air bases. Livorno and Vicenza are U.S. Army bases. Sigonella and Naples are U.S. Navy stations.

Italian DRMOs are significant for the reasons:

1. Livorno disposes of the Italian Military Assistance Program (MAP) property.

2. Aviano is in a strategic location (less than one hour drive from the Yugoslavian border).

3. Sigonella is a sensitive Navy station that is expanding.

PHYSICAL SECURITY

The security at the bases differ. At Livorno, a special depot pass is obtained before entering the compound. At Aviano, the DRMO is not on the base. There is not any security at the gate, one can just drive to the office and yard. Upon consideration of the sensitive inventory handled by this facility coupled with the lack of security and proximity to the Eastern bloc border, it is felt that a serious security threat exists at the Aviano DRMO.

TYPE OF SALE ITEMS

Livorno, as mentioned, disposes of the Italian MAP property. The majority of their munition and strategic list items sold are MAP property. Therefore, the majority of the items being disposed through the Livorno DRMRS system is older and out-dated. Their inventory of disposable property is dwindling as the MAP property is being phased out.

An inspection of the DRMO yard at Livorno during the week of August 11, 1986, did reveal scrap lots. There were a few munitions list items (i.e. airplane test stands) in the yard that were awaiting to be sold. They were not sold in the prior sale because of the requirement to mutilate by the bidder. The equipment in the yard was older and in poor repair.

Aviano is a strategic air base. The munition and strategic list items being disposed through the system are circuit boards and high technology fuses. The circuit boards are scrapped of their precious metals and then sold as scrap. The boards lose their identity and accountability at the point of scrapping

An inspection of the DRMO yard at Aviano during the week of August 18, 1986, revealed also scrap lots. The munition list items at the yard were in the process of being mutilated by the DRMO personnel. Since the items were small in size, the DRMO performed the mutilation.

PROBLEMS WITH MUTILATION/DEMILITARIZATION

In discussion with the DRMO personnel, there is some concern with the policy of mutilation. The guideline the field personnel received from their Headquarters is vague on the definition of mutilation i.e. "to render unfit for intended purpose." The DRMO personnel are in the process of trying to obtain some guidance as to the extent of mutilation. Currently, it is in the DRMO's opinion as to the extent of mutilation which leaves room for variance.

Mutilation/demilitarization (Demil B) is performed either by the DRMO personnel or by the purchaser depending on the size of the item. If the item could be demilitarized or mutilated by the DRMO personnel it would be. If the size was too big, the purchaser would provide the manpower to mutilate/demil B the item. The DRMO personnel would then certify it was correctly performed. The mutilation and demil B policy is in effect for purchasers outside the United States.

During these discussions, it was also mentioned that mutilation was not fair for the contractors. They felt they would not be selling the mutilated scrap therefore, the DRMO would not be making as much money as before.

Another area of concern is the demilitarization in the field. The rotation in Italy is two years and it takes that long to train one to demilitarize properly. Therefore, the foreign national in place at the DRMO is the person with the most knowledge regarding demilitarization.

The foreign nationals in the DRMOs provide continuity to the DRMO because of the rotation. In Italy, the foreign nationals have been in place over 20 years. They know all the contractors fairly well, which could lead to potential problems in the demilitarization/mutilation and sales area.

It was also noted that when the items are turned in to the DRMO, the proper demilitarization code could not be assigned if the NSN was not complete. In the instances, when an item is turned in with a local NSN, the capability to check if the demilitarization code is correct cannot be performed by the IRIS accountability system. Therefore, items could slip through the DRMRS system that should be demilitarized and are not.

RECOMMENDATIONS:

To reduce the threat of illegal exportation and diversion of munition list items it is recommended to completely mutilate the same. When the item is completely destroyed, the item cannot be salvaged for its original use.

If the items are not be mutilated, the next step is for the DRMO not to accept items unless the item NSN is complete.

RETREAD - ENGLAND

During the month of August 1986, an intensive on-site evaluation of the Molesworth DRMO yard was conducted by an Operation RETREAD special agent. The following sensitive defense electronics items were discovered at that facility.

1. Synchronizer, Monitor
   NSN: 5895-00-99-92440
   MDL 395V/G SN1133
   ID: 30928A
   MFR: Rixon Electronics, Silver Springs, Maryland
   CONTRACT #: GS-035-38648

2. Synchronizer, Monitor
   NSN: 5895-00-0002435
   MDL SN394V/G SN2378
   ID: 30891A
   MFR: Rixon Electronics, Silver Springs, Maryland

3. Synchronizer, Monitor
   NSN: 5895-00-9992435
   MDL 394V/G SN2377
   ID: 30890A
   MFR: Rixon Electronics, Silver Springs, Maryland

The items were identified by manufacturer's plate and by Department of Defense (DOD) Form 1348-1, turn-in document. They were not identified as Strategic Trade Control or Munitions List Items. The DOD Forms 1348-1 for the material reflected demilitarization code "A" (non-MLI, no demilitarization required), and condition code "B-2" (unused-fair). The DOD/Operation RETREAD staff indicated that the above items should have been classified demilitarization code "J," demilitarization by mutilation, and that the items should not have reached the DRMO.

Further inspection of the Molesworth facility disclosed 24 additional items of electronics including 6 items bearing template labels marked "SECRET." These labels were covered by black electrician's tape. The items had been through the reutilization cycle and were prepared for public sale. They were identified as demilitarization code "A" and assigned condition code "A" serviceable - issuable without qualification. Manufacturers plates were not in evidence and documentation did not adequately identify the items. For example, the documents prepared for the items reflected "NSN 5895-00-multiplexer."

The inspection of this facility was conducted in coordination with the Counter-Intelligence Chief, Air Force OSI, District 62. Based on the finds at the Molesworth DRMO, OSI has initiated a discreet investigation to ascertain the circumstances involving questionable turn-ins.

In addition to the inspection of the DRMO facility, the firm of [redacted], a purchaser of munitions list items from the DRMS was identified as a possible diverter of critical munitions list items. It appears that [redacted], was knowingly involved in direct violations in the U.S. of the Iranian Embargo and the Arms Export Control Act.

Data relative to [redacted] alleged violations has been referred to U.K. authorities for follow-up. However, [redacted] when interviewed, appeared confident in its ability to insulate itself by using differences in U.S./U.K. interpretations and control of munitions items. Our inquiry determined that Lovaux should be investigated to determine if it should be denied access to DOD excess material based on the fact that [redacted] allegedly re-sells the property to Iran.

Findings

Problems inherent in the DRMS disposal system deter effective export law enforcement. These problems may be inferred from the [redacted] example and basically support previously recognized general perceptions:

- Security Trade Controls are ineffective paper controls only, relying on purchasers reports.
- No mechanisms exist for verification of resales or other dispositions.
- There are insufficient identification or total lack of verifiable identification of MLI or other controlled materials, including those sold is "useable" as well as "scrap."

Because of the variance between the U.K. and the U.S. in allowing exportations of munitions list items to certain countries, materiel, in effect embargoed from export to certain countries from the U.S., is being exported to proscribed destinations.

No mechanism apparently exists to cross reference derogatory information or to update the DRMS "cleared bidders lists." This is evidenced by the fact that [redacted], remains a top purchaser of U.S. military surplus items.

Classified items were being sold by the DRMS.

Recommendations:

Munitions list items should be completely destroyed prior to sale by the DRMS.

The Defense Logistics Agency should not accept any items into the DRMS unless properly and accurately identified.

The DRMS should institute a stricter regime in conducting I&R checks, end-use verification and in denying suspect firms surplus property.

RETREAD-BELGIUM

A review of DRMS sales records in Wiesbaden, Germany, revealed the names of three firms/individuals who had purchased MLI's of potential concern. Those parties were identified as follows:

Purchaser	Commodity
[redacted] Belgium	Used fruehauf trailer with mounted antenna-receiver-transmitter; used fruehauf trailer with antenna.
[redacted] Brussels, Belgium	Unprepared heavy steel scrap from 20 demilitarized full tracked light A14X13 14-51 tanks and one half tracked 14-16 motor carriage.
[redacted] Belgium	Forty-one SCR 399 radio sets and one AN/MPQ10A radar set.

The above information was provided to the Customs Attache, Paris, for referral to Belgian authorities for their use.

RETREAD - THE NETHERLANDS

During the course of the Operation RETREAD threat assessment conducted in the FRG it was learned, through interview of personnel from the DRMO's and Military Services' Investigative elements, that theft from the DOD supply system rather than loss through surplus property was viewed as a more significant problem. Further, in light of the alleged loss from inventory of $47 million from the DOD Mainz tank facility, the team attempted to document these allegations and run to ground the preception that the potential loss (diversions) of military hardware was more significant for stolen property than excessed.

Working with DCIS, Weisbaden, an informant who is now controlled by DCIS was developed who provided information relative to theft(s) of military equipment and diversion of same to various worldwide destinations.

The confidental informant stated that Mr. [redacted] of the international trading company, [redacted] 3881 PG Putten, Holland, sells M-113, M-60, M-47 and M-48 tank engines and parts on a worldwide basis; that these parts were obtained directly from the Mainz depot by a "connection" [redacted] maintains in that facility, that [redacted] in partnership with [redacted] a firm in Belgium, facilitates the transfer of these parts to Iran.

The confidential informant alleged that [redacted] of the [redacted], Ltd., and his associate, [redacted] an alleged Basque terrorist could arrange and coordinate weapon movements from the U.S. to the IRA and PLO. In a rather disjointed monologue, the confidential informant reported that a [redacted] of [redacted] and [redacted] Madrid, Spain, could obtain two BGM 71A or 71C missiles and facilitate their transfer to anywhere in the world. The source added that they were also capable of covertly shipping tank and missile spare parts on a worldwide basis.

DCIS, Weisbaden, has indicated that it, together with the various affected Military Service Investigative units will follow up on the sources allegations, and, as previously reported, the loss of spare parts from the Mainz Tank facility. The Customs Attaches in both Bonn and The Hague have been briefed relative to the sources allegations and the DCIS investigative plan of action. Coordination and liaison between the Customs Service and DOD elements to proceed with these issues has been established.

THE OMC AND EXPORT LICENSING

The Office of Munitions Control of the Department of State has the responsibility for issuing export licenses for all arms exports. Rick Marshall explores the OMC's functions and process.

Under the US International Traffic in Arms Regulations (ITAR) the Office of Munitions Control — OMC — a subdivision of the Department of State's Politico-Military Affairs Bureau (PM), has the exclusive jurisdiction over the export of all arms and technical data which come under the Munitions Control List. As such, OMC is a conduit, the office that receives requests for information and for permission to export, then fans them out to the relevant branches of the State and Defense Departments and receives their recommendations before issuing or refusing to issue the necessary export licenses. As the authority for a whole series of licensing procedures associated with the export of controled munitions, OMC is in some ways the most important link in the defense export chain. At the same time, because it does little in the way of decision-making on difficult or controversial sales, it is among the least important of the decision-makers involved in the process.

According to the January 1, 1985, revision of ITAR, "The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended (42 FR 4311). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State (35 FR 5422)." Under the Arms Export Control Act the President also has the authority to "designate which articles shall be deemed to be defense articles". (The actual designations have been delegated to the Secretaries of Defense and State.) These make up the United States Munitions List. Once on the List export of these articles and services are regulated exclusively by the State Department, while exports not on the list are regulated by the Commerce Department.

Commodity Jurisdiction

It is natural given the continuing development of defense items and the ever-changing nature of international relations, that some questions will arise concerning whether or not a "defense article" or "defense service" is on the Munitions List. OMC makes that determination upon written request, provided the "request for determination" is accompanied by five copies of the letter and any specific documents relating to the article. In the event that OMC encounters any doubt on the matter, it initiates a Commodity Jurisdiction Procedure, which entails consultations among the Departments of State, Defense and Commerce. The definition of what constitutes a defense article includes models, mockups and other items which "reveal technical data". Defense services include "supplying foreign persons with assistance or training in design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles". Similarly, they include furnishing foreign persons with technical data relevent to defense items.

By law and with a few exceptions "any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Munitions Control". The person (which is defined as "a natural person as well as a corporation, business association, partnership, society, trust or any other entity, organization, or group, including governmental entities") is required to pay a registration fee of from $250 to $1,000 to cover a period of from anywhere from one to five years. Registration is made on a Department of State Form DSP 9, which must be submitted to the Cashier, ESC/C at the State Department. Provisions are made for lapses in registration and refunds for fees paid in advance — provided OMC is notified at the beginning of any year for which the refund is claimed.

OMC oversees the essential record keeping for those "persons" who are registered. Registrants are required to notify OMC "30 days in advance of any planned transfer of ownership or control of the registered corporation or entity to a foreign person". Registrants must maintain the records "concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services" for six years and which must be made available to the Director of OMC (currently William Robinson) "at all times for inspection and copying".

According to one official, OMC gets between 40,000 and 45,000 general requests — whether commodity advisory opinions or simple requests for information — per year. This compares with some 25,000 permanent export requests, 500-800 classified requests, and 500-700 agreements or contracts. The great bulk of their work, he says, concerns routine cases, for example small arms or ammunition for long-standing programs with reliable US allies.

Case Work

The general rule over any potentially controversial case, however, is "when in doubt, send it out". These would generally concern top line or sensitive US equipment and/or sales to sensitive regions of the world. Only some 15 to 20 percent of the cases OMC sees each year do, in fact, get sent or "fanned out" to the other offices within the State and Defense Departments. These tend to be the cases, however, which may spark the most interest within the Government and its close observers. However, in most instances, the intra-Governmental bodies which discuss them on a case by case basis, come to their decisions collegially. Yet any single office, apparently, has the power to veto any case, and in a complicated bureaucratic battle the Under Secretary for Security Assistance is sometimes considered the "court of last resort". A particularly thorny case can go as high as the Secretaries of Defense and State and even to the President.

Any person desiring to export a defense article must, of course, obtain a license from OMC. Regulations state that "a request for an approval to make a proposal or presentation with respect to significant military equipment must be made by letter" to OMC. Approval of OMC for a proposal or presentation is not necessary for NATO nations, Australia, Japan or New Zealand, however. All applications must contain the proposed port of exit as well. The ship-

per's export declaration must be cleared through the district director of customs, who in turn sends a copy of it to OMC. Exceptions to this are generally made in regard to Canada, which is generally subject to fewer controls than other countries.

OMC closely examines the paperwork throughout the process. The process itself can take anywhere from a couple of weeks to a couple of years.

A company which is duly registered and may wish to make a specific proposal to a country where it has spotted a marketing possibility has two options. It may seek a "tech data license" from OMC, that is permission to approach the relevant foreign authorities with sufficient technical information to initiate the sales process. It stands to reason that the more sensitive the item or service involved the more difficult is the process of obtaining the license. Generally classified items require more close attention by OMC than do unclassified ones.

It is OMC which determines the specific export controls to which an export of technical data must be bound. If the technical data is classified, the application must contain specific information. In instances where the US has a General Security of Information Agreement, OMC may waive the nontransfer and use certificate. In certain other cases — such as technical data being requested as a result of a DoD directive — OMC approval may not be necessary. All applications for the export or temporary import of classified technical data or classified defense articles must be submitted on Form DSP-85. Applications must be accompanied by seven copies of the data and a completed DSP-83 (nontransfer and end-user certificate).

Classified materials which accompany the application must be sent to OMC in accordance with section II of the Defense Security Manual (DoD Manual 5220.22-M). OMC then forwards a copy of the technical data to the DoD's Defense Investigative Service, which will return the endorsed license to OMC if approved.

In the event that the company feels that OMC might not issue the tech data license — it being understood that a refusal would enter into the permanent record of the company's request, something that it might be hard to undo at a later time — it may be considered prudent to test the waters by seeking an advisory opinion from OMC. These are nonbinding but give a good sense of which way the wind is blowing and the company can therefore gauge its reaction accordingly.

In the event a US "person" wishes to submit a proposal with a "foreign person" for either a manufacturing license agreement or a technical assistance agreement, OMC must grant its written approval. The defense services described in the agreement must all describe the equipment and technology involved, along with the proper military nomenclature, contract number, Federal stock number, nameplate data and so on as well as the manufacturing rights involved, the duration of the agreement, the countries or areas in which the manufacturing, production or processing occurs. In addition they must contain assurances compliance with relevant US laws pertaining to licensing and export. The applications must furthermore be accompanied by a letter plus seven copies of it with eight copies of the proposed agreement and include a lengthy list of appropriate data. If approved, the services may then generally be provided without further licensing in accordance with the regulations. Proposed amendments and extensions to these agreements must also be submitted to OMC for approval. Once the official agreements are signed a copy must be sent to OMC within 30 days after it enters into force. If the agreement is not concluded, OMC must then be notified with 60 days. It must also be notified at least 30 days before the expiration of such an agreement.

Short of full-scale export licenses, OMC can issue temporary export licenses (DSP-73) for unclassified defense articles in the event the item will be exported for a period of less than 24 months and then will be returned to the US and on the condition that no transfer of title will actually occur. Neither can the item be sold. OMC has the authority to renew the temporary export license if necessary.

OMC also issues temporary import or intransit licenses for unclassified defense items. This is required for any defense articles brought into the US temporarily for overhaul, repair, or modification. In these cases, OMC may require a bond. Intransit licenses are also required in order for unclassified defense articles to transit the US en route to a third country or if an imported defense article is to be incorporated into another article for later transshipment out of the US.

Regulations also require that the transfer of registration or control of "any aircraft, vessel, or satellite on the United States Munitions List" to a foreign person must be subject to a license or written approval from OMC. Similarly, the registration in a foreign country of "any aircraft, vessel, or satellite on the United States Munitions List which is not registered in the United States but which is located in the United States constitutes an export" and therefore requires an OMC license. These transfers may also require the prior approval of other US Government agencies. OMC also is required to issue a license whenever a privately owned aircraft or vessel of war carrying defense articles "makes a voyage outside the United States".

End User's Certificate

The State Department and the Office of Munitions Control are responsible for issuing end-user's certificates. "The written approval of the State Department", regulations state, "must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of destination as stated on the export license. . . . Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office on Munitions Control or claiming an exemption". Any application for a license to export significant military equipment (Form DSP-5) also has to be accompanied by a non-transfer and use certificate (Form DSP-83) "at the time of submission to the Office of Munitions Control". The form is to be "executed by the foreign consignee and foreign end-user". The DSP-83 may be submitted at another time than the export license if there are "special reasons". In the event that the DSP-83 is signed by a "nongovernmental foreign end-user", the OMC may also require that the relevant foreign country also "execute the certificate", thus providing the country's guarantee that the item will not be reexported or resold.

Only after a defense export in excess of $14-million or a defense services contract of more than $100,000 has cleared through the Government and "more than 10 calendar days have elapsed since the receipt by the Congress of the certification required by the Arms Export Control Act" can OMC notify the exporter and issue the desired export license. The license is then valid for a period of two years. Defense articles to be shipped after that require a new license and the new application should make reference to the one it proceeded. Any "unused, expired, expended, suspended, or revoked licenses" have to be returned "immediately" to the State Department.

Exemptions, Revocations, Debarment

There are, of course, a number of countries to whom export of defense articles are prohibited. The Director of OMC has the right to "order the temporary suspension or modification of any or all" of the pertinent regulations "in the interest of the security and foreign policy of the United States". The State Department has the authority to revoke, suspend, or amend without prior notice any export license whenever it "deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States" or whenever it feels that relevant laws have been violated. In such cases, it is the OMC that is the formal notification agent. A US "person" has the right to request reconsideration of such a decision if he submits a written request for reconsideration to OMC within 30 days of notification.

Although the main authority for the debarment (or prohibition) for violations of the Arms Export Control Act are the responsibility of the Director of the Bureau of Politico-Military Affairs, the Director of OMC also has the authority to "order the interim suspension of any person when the Director believes that grounds for debarment exist". The Director may also issue waivers to the provisions of the relevant regulations "in a case of exceptional or undue hardship". OMC is also involved in whatever legal proceedings may ensue following the decision to debar and is the authority to dismiss the charges whenever sufficient grounds to prove malfeasance are not found.

OMC has other quasi-legal functions. In the case of any applicant or vendor who pays — or is coerced into paying — political contribution in excess of $1,000 or commissions in excess of $100,000, he is required to inform OMC of it and include specifics regarding the case. ☆

FMS or Commercial?

Whether a foreign buyer should arrange to negotiate a Government-to-Government Foreign Military Sales (FMS) contract with the US Department of Defense, or deal directly with the contractor in a commercial deal, varies from case to case. This staff report examines the pros and cons of each type of sale.

The sale of US defense equipment abroad may be done in a number of ways, but the two major categories are direct commercial sales between the contractor and the foreign Government, and Foreign Military Sales (FMS), which are handled on a Government-to-Government basis. Note that FMS sales are not limited to those involving FMS credits; they may be sales for cash, but are handled by the US Government and managed by the Defense Security Assistance Agency (DSAA).

Whether a company chooses to pursue a given sale on a direct commercial basis or go through the Government FMS process depends on a variety of considerations. However, both types of sale are governed by the same basic constraints: both require US Government approval, and are governed by the Arms Export Control Act; both must follow the Congressional notification procedure above certain threshold levels described in the article on Pages 14-15.

Under the FMS program, the US Department of Defense (DOD) makes purchases for the foreign buyer, through its established contracting network; thus the foreign buyer is not involved in contract negotiations with the contractor, and the buyer's responsibility is limited to and spelled out by the Government Letter of Offer and Acceptance (LOA), as described in the article on the FMS process on Page Six. For a purchasing country which lacks an elaborate contracting network, or the skill and experience at negotiating contracts, having DOD do the work for them may be an important advantage in assuring the lowest possible price and timely delivery. (For an overview of advantages and disadvantages, see the table on the facing page.)

Another potential FMS advantage is in follow-on support for items requiring substantial logistical and training support, since it allows the buyer to benefit from existing US experience and training and logistics capabilities. However, a commercial purchase does not necessarily mean that spares or training cannot subsequently be purchased through FMS; the Greek F-16 sale, a commercial transaction, is likely to be followed by training and support acquired through the FMS program.

One system used by the US Government is the Cooperative Logistics Supply Support Arrangement (CLSSA), under which the buyer can draw from the DOD inventory by simply submitting requests for individual parts; DOD thus acquires the parts through its normal purchasing sources. There have been some problems with CLSSA arrangements in support of purchases made through commercial channels, however, mostly because sometimes the items contain nonstandard components which are not in DOD inventory. If the purchaser needs an item which is not in DOD inventory or supported by the DOD logistics system, then DOD is likely to recommend a commercial buy.

If US military assistance will be needed during the procurement planning phase, a country is likely to prefer the FMS route as well. But this is likely to be dependent on the cost of the system being purchased.

As for price, this again is dependent on many considerations; DOD says that "usually" the total acquisition cost for purchase of equipment and follow-on support through FMS will be less than that in a commercial sale, but not always.

For a purchase involving a variety of manufacturers, of Government Furnished Equipment (GFE) for example, FMS provides procurements directly from as many original manufacturers as possible; to duplicate this advantage in commercial purchases, a country requires a large and experienced procurement staff, otherwise it is likely to procure through a single prime contractor, which may increase overall cost.

Another area of possible price advantage lies in the fact that the LOA price is the educated best estimate of items to be provided, and that in most cases, studies have shown that the final price is actually lower than that estimated in the LOA, averaging some 17 percent lower. (However, there are also occasions where the price exceeds the original estimate.) By contrast, most commercial sales are for fixed-price contracts. (Differing pricing structures make it somewhat hard to compare the relative prices anyway.)

Price

On the other hand, price considerations may work the other way in a number of instances, many of them involving problems posed by the various restrictions and red tape imposed on DOD procurement, particularly if a customer does not require that its equipment meet US military specifications (MILSPEC), commercial purchase may be cheaper.

One instance would be in the case of items produced by two or more manufacturers or where a foreign system is in low competition; under such competitive circumstances fixed price quotes may be offered below the cost/profit margins which DOD regulations allow for US procurement, and thus the foreign buyer may save money.

Speed is another concern. Generally speaking, private industry can prepare its proposal for a sale more quickly than the Government Letter of Offer and Acceptance (LOA) procedure. Also, if the foreign buyer has a staff of skilled contract negotiators, it may be possible to speed up contract negotiations. The contractor may be able to proceed with "at risk produced" items, items produced in anticipation of a future contract, thus cutting the waiting time. Such a procedure is not available to DOD except in national emergencies.

Another area in which commercial purchases may provide an edge is the increasingly important offset arena; the 100 percent offset component of the Greek F-16 deal seems to have been the reason for choosing to go commercial rather than FMS. Offset arrangements are easier to negotiate in direct contracts with the contractors, since the US Government will not finance or guarantee offsets. There have been, however, many successful offset programs conducted under FMS procedures, although the contractor company must assume full responsibility for the offset portion.

Similar considerations apply in the area of coproduction agreements and licensed production. While some degree of US Government involvement is generally necessary, it may be easier to negotiate the arrangements directly with the company rather than via DOD. ☆